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No. 06-8120

IN THE

SUPREME COURT OF THE UNITED STATES

BRUCE EDWARD BRENDLIN,

Petitioner,

v.

THE STATE OF CALIFORNIA,

Respondent.

Supreme Court, U.S.
FILED
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On Petition for Writ of Certiorari

To the California Supreme Court

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

1. Whether a passenger in a vehicle subject to a traffic stop is thereby "detained" for purposes of the Fourth Amendment, thus allowing the passenger to contest the legality of the traffic stop.

PARTIES TO THE PROCEEDINGS

The parties to the proceedings in the California Supreme Court included the State of California and petitioner Bruce Edward Brendlin. There are no parties to the proceedings other than those named in the petition.

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On Petition for Writ of Certiorari

To the California Supreme Court

PETITION FOR WRIT OF CERTIORARI

The petitioner, Bruce Edward Brendlin, respectfully petitions this Court for a writ of certiorari to review the judgment and opinion of the California Supreme Court filed on June 29, 2006.

OPINIONS BELOW

The opinion of the California Supreme Court to which this petition relates was filed on June 29, 2006, and is attached as Appendix A. It is reported at *People v. Brendlin*, 38 Cal.4th 1107, 136 P.3d 845, 45 Cal.Rptr.3d 50 (2006). The California Supreme Court's one-page order denying rehearing was filed on August 30, 2006, and is attached hereto as Appendix B. The opinion of the Court of Appeal of the State of California, Third Appellate District, is attached hereto as Appendix C, and is reported at *People v. Brendlin*, 115 Cal.App.4th 206, 8 Cal. Rptr. 3d 882 (2004). The transcript of the trial court hearing on petitioner's motion to suppress is attached hereto as Appendix D.

JURISDICTION

The decision of the California Supreme Court to be reviewed was filed on June 29, 2006. Petitioner filed a timely Petition for Rehearing on July 10, 2006. The California Supreme Court denied the Petition for Rehearing on August 30, 2006. This petition is filed within 90 days of that date. Rule 13. Petitioner invokes this Court's jurisdiction under 28 U.S.C. section 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

U.S. CONST. amend. IV:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. CONST. amend. XIV § 1:

> All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

On November 27, 2001, Robert Brokenbrough, a deputy with the Sutter County Sheriff's Department, spotted a vehicle with expired registration tags. In the rear window, the car displayed a red temporary operating permit from the California Department of Motor Vehicles; the sticker had the number eleven on it, indicating that it was valid for the month of November. Deputy Brokenbrough believed that it was not lawful for the car to be operated with only a temporary operating permit. The deputy contacted sheriff's dispatch and verified that the plate was expired, but that an application was in process for renewal of the registration. RT 12-14, 42-43.

Deputy Brokenbrough activated his lights and made a traffic stop in order to verify that the sticker on the car's window was the one issued for that license number. The driver of the car was Karen Simeroth, and Bruce Brendlin was in the passenger seat. After he stopped the car, Deputy Brokenbrough recognized Mr. Brendlin, who also verbally identified himself at the deputy's request. Deputy Brokenbrough knew that either Mr. Brendlin or his brother was a parolee at large, so he contacted dispatch and eventually received word that Mr. Brendlin was wanted for a parole violation. The deputy then ordered Mr. Brendlin out of the car at gunpoint and placed him under arrest. A search incident to Mr. Brendlin's arrest turned up an orange syringe cap on his person, and items related to drug manufacturing in the car. RT 12-19, 26-38, 43.

On December 21, 2001, the district attorney of Sutter County, California, filed an information in Superior Court charging Mr. Brendlin and Ms. Simeroth[1] with manufacturing methamphetamine (Health & Saf. Code § 11379.6)[2], transporting methamphetamine (Health & Saf. Code § 11379, subd. (a)), and possessing methamphetamine (Health & Saf. Code § 11377, subd. (a)) on November 27, 2001. As to Mr. Brendlin alone, the information alleged two prior convictions under Health and Safety Code section 11370.2, subdivision (b). CT 35-37.

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[1]Ms. Simeroth was not a party to the appeal.

[2]All references to the Health and Safety Code, the Vehicle Code, or the Penal Code are to the code of the State of California unless otherwise specified.

On January 25, 2002, Mr. Brendlin moved to suppress unlawfully seized evidence under Penal Code section 1538.5 and the Fourth Amendment to the United States Constitution, alleging that he was unlawfully detained because the officer had no reasonable suspicion to justify the traffic stop, and requesting suppression of items seized from his person as well as from the car. Following a hearing on February 8, 2002, the superior court denied that motion, finding that the traffic stop was not unreasonable, that Mr. Brendlin was not detained by virtue of the traffic stop because he was free to leave once the car was stopped, and that Mr. Brendlin lacked "standing" to bring a motion to suppress the items found in the car. CT 42, 47, 85, RT 70.

On February 11, 2002, Mr. Brendlin pled guilty to a violation of Health and Safety Code section 11379.6, subdivision (a), and admitted an amended allegation that he had served a prior prison term within the meaning of Penal Code section 667.5, subdivision (b). The prosecution moved to dismiss the remaining counts and allegations, and the parties agreed that Mr. Brendlin would serve a term of four years in state prison, concurrent to any parole violation. Mr. Brendlin was sentenced in accordance with the plea agreement. CT 88.

On March 15, 2002, Mr. Brendlin filed timely notice of appeal under Penal Code section 1538.5, subdivision (m). On January 27, 2004, the Court of Appeal of the State of California, Third Appellate District, issued an opinion reversing the denial of Mr. Brendlin's motion to suppress. *People v. Brendlin*, 115 Cal.App.4th 206, 8 Cal. Rptr. 3d

882 (2004). The Court of Appeal held that Mr. Brendlin was entitled to challenge the legality of the traffic stop, that the stop was undertaken without reasonable suspicion, and that the evidence seized from Mr. Brendlin's person and from the car should have been suppressed as fruits of the illegal traffic stop. *Id.* at pp. 210-211, 8 Cal.Rptr. at p. 885.

The California Supreme Court granted the California Attorney General's petition for review on April 14, 2004. In that court, the prosecution conceded that the traffic stop was not supported by reasonable suspicion, but instead focused on whether Mr. Brendlin, as a passenger, was detained by virtue of the traffic stop. *People v. Brendlin*, 38 Cal.4th 1107, 1114, 136 P.3d 845, 848, 45 Cal.Rptr.3d 50, 54 (2006). On June 26, 2006, the California Supreme Court reversed the lower court opinion, holding that when an officer makes an illegal stop of a automobile, the resulting Fourth Amendment violation may be asserted only by the driver of the vehicle, not by any passenger, because a passenger is not "seized" in the absence of any indication by the officer that the passenger is the subject of the officer's investigation or show of authority. *People v. Brendlin*, *supra*, 38 Cal.4th at 1123, 136 P.3d at 854, 45 Cal.Rptr.3d at 62. A petition for rehearing was denied on August 30, 2006.

REASONS TO GRANT THE PETITION

CERTIORARI IS APPROPRIATE IN ORDER TO RESOLVE THE SPLIT OF AUTHORITY BETWEEN THE CALIFORNIA SUPREME COURT AND OTHER STATE AND FEDERAL COURTS AS TO WHETHER A PASSENGER IS DETAINED BY VIRTUE OF A TRAFFIC STOP

A. Introduction

In its opinion affirming the denial of Mr. Brendlin's motion to suppress, a bare majority of the California Supreme Court has joined the high courts of Colorado and Washington in holding that a passenger's Fourth Amendment rights are not implicated by an unlawful traffic stop. *People v. Brendlin*, 38 Cal.4th 1107, 1115, 136 P.3d 845, 45 Cal.Rptr.3d 50 (2006); *see also People v. Jackson*, 39 P.3d 1174 (Colo. 2002) and *State v. Mendez*, 970 P.2d 722 (Wash. 1999). In order to reach this conclusion, the California Supreme Court has crafted a definition of "seizure" that is not consistent with this Court's holdings. Moreover, the California decision departs from the overwhelming weight of state and federal authorities, including a thorough and well-reasoned opinion issued by the Third Circuit one month after the California Supreme Court issued its opinion in the instant case. *United States v. Mosley*, 454 F.3d 249 (3rd Cir. 2006).

The nearly simultaneous issuance of the opinions in *Brendlin* and *Mosley*, and the utter irreconcilability of the conclusions reached by the respective courts, sets up a split of authority that can only be resolved by this court's intervention. This Court should grant this petition in order to resolve that split.

B. The Decision of the California Supreme Court is at Odds with this Court's Holdings

Although this Court has never had occasion to directly rule on the issue of whether a passenger may challenge the fruits of an unlawful traffic stop, the majority of the courts that have considered the issue have interpreted this Court's hints on the subject as tacit endorsement of the position that a passenger's Fourth Amendment rights are implicated by a traffic stop. This view is consistent with this Court's holdings regarding what constitutes a seizure and what police actions implicate Fourth Amendment rights.

In *Tennessee v. Garner*, 471 U.S. 1, 7, 105 S.Ct. 1694, 85 L.Ed.2d 1 (1985), this Court held that "[w]henever an officer restrains the freedom of a person to walk away, he has seized that person." *Id.*, 471 U.S. at 7; *see also United States v. Faulkner*, 450 F.3d 466, 475 (9th Cir. 2006). Even a slight detention is a seizure for Fourth Amendment purposes regardless of whether it amounts to an actual arrest. *Dunaway v. New York*, 422 U.S. 200, 207-209, 99 S.Ct. 2248, 60 L.Ed.2d 824 (1979); *Terry v. Ohio*, 392 U.S. 1, 32-33, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968). *Terry* defined a detention as follows: "[o]nly when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen may we conclude that a 'seizure' has occurred." *Terry*, *supra*, 392 U.S. at 19, n. 16. The standard is an objective one: a detention occurs when a reasonable person would not believe he was free to end his encounter with the police. *Florida v. Royer* 460 U.S. 491, 501-502, 103 S.Ct. 1319, 75 L.Ed. 229 (1983), *United States v. Mendenhall*, 446 U.S. 544, 554, 100 S.Ct. 1870, 64 L.Ed.2d 497 (1980).

Thus, the question – which this court has not directly addressed – is whether a reasonable person would feel free to leave during a traffic stop of a car in which that person is a passenger, or whether a traffic stop in some restrains a passenger's liberty. Put another way, the issue of whether the passenger may challenge an unreasonable traffic stop comes down to the question of whether the passenger's Fourth Amendment rights have been implicated by that traffic stop. *See Rakas v. Illinois*, 439 U.S. 128, 99 S.Ct. 421, 58 L.Ed.2d 387 (1978).[3]

To the extent that this Court has addressed the issue in dicta, that dicta has strongly hinted that a passenger is detained by virtue of a traffic stop. In *Colorado v. Bannister,* 449 U.S. 1, 101 S.Ct. 42, 66 L.Ed.2d 1 (1980), the Court stated in a footnote: "There can be no question that the stopping of a vehicle and the detention of its occupants constitutes a 'seizure' within the meaning of the Fourth Amendment." *Bannister,* 449 U.S. at 4, n. 3. The *Bannister* court in turn cited an earlier decision, *Delaware v. Prouse,* 440 U.S. 648, 99 S.Ct. 1391, 59 L.Ed.2d 660 (1979), which noted that the case implicated Fourth Amendment rights "because stopping an automobile and detaining its occupants constitute a 'seizure' within the meaning of [that amendment], even though the purpose of the stop is limited and the resulting detention quite brief." *Prouse*, 440 U.S. at 653; *cf.*

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[3]Although this Court held in *Rakas* that passengers could not challenge the search of an automobile in which they claimed no possessory interest, that holding is distinguishable from the case at bar, because in *Rakas* the passengers did not challenge the traffic stop. *Rakas v. Illinois, supra,* 439 U.S. at 130-132.

Whren v. United States, 517 U.S. 806, 810, 116 S.Ct. 1769, 135 L.Ed.2d 89 (1996) [noting that "[t]emporary detention of individuals during the stop of an automobile by the police, even if only for a brief period and for a limited purpose, constitutes a 'seizure' of 'persons'"]; *cf. Berkemer v. McCarty*, 468 U.S. 420, 436, 104 S.Ct. 3138, 82 L.Ed.2d 317 (1984) ["It must be acknowledged at the outset that a traffic stop significantly curtails the 'freedom of action' of the driver and passengers, if any, of the detained vehicle"].

The California court found these statements unpersuasive, however, and instead focused on the definition of a "seizure." The California majority declined to adopt the definition of a detention propounded by this Court in *Terry v. Ohio*, calling the *Terry* standard "a *necessary*, but not a *sufficient*, condition for a seizure." *People v. Brendlin, supra,* 38 Cal.4th at 115 (emphasis in original), citing *California v. Hodari D.*, 499 U.S. 621, 628, 111 S.Ct. 1547, 113 L.Ed.2d 690 (1991). Instead, California relied on this court's holdings in *Hodari D.* and *Florida v. Bostick*, 501 U.S. 429, 439, 111 S.Ct. 2382, 115 L.Ed.2d 389, 401-402 (1991) to craft a three-part definition of a seizure, and in doing so, has departed from this Court's admonitions against bright-line rules in favor of a fact-specific approach to assessing reasonableness in the context of the Fourth Amendment. *See Ohio v. Robinette*, 519 U.S. 33, 39, 117 S.Ct. 417, 136 L.Ed.2d 347 (1996).

The three-part test adopted by the California majority holds that a seizure occurs only "when the police, by the application of physical force or show of authority, seek to

restrain the person's liberty," when "the police conduct communicated to a reasonable innocent person that the person was not free to decline the officer's request or otherwise terminate the encounter," and when "the person actually submitted to that authority [citation] for reasons not 'independent' of the official show of authority." *People v. Brendlin, supra,* 38 Cal.4th at 1118. While this Court has used variations of each of these factors to define different types seizures, the California Supreme Court erred in adopting these factors as a rigid checklist that must be satisfied before any seizure can be deemed to have occurred. As noted above, this Court has instead consistently applied the totality of the circumstances test to the determination of whether a person is seized under the Fourth Amendment. *Florida v. Bostick, supra,* 501 U.S. at 439. Part of that totality of the circumstances test has included the issue of whether a person's freedom of movement has been curtailed by deliberate police action. *See, e.g., Berkemer v. McCarty, supra,* 468 U.S. 420.

Moreover, the California court takes its three rules out of the context of the cases cited, with some misleading results. For instance, the majority opinion quotes *Terry v. Ohio, supra,* 392 U.S. at 19, n. 16, for the proposition that a seizure occurs only "when the police, by the application of physical force or show of authority, *seek* to restrain the person's liberty." *People v. Brendlin, supra,* 38 Cal.4th at 1118 (emphasis added). The precise language used by the court seems to require that the use of force be directed

specifically at the person seized, but the actual quotation from the *Terry* opinion carries no such implication:

> Only when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen may we conclude that a 'seizure' has occurred.

Terry v. Ohio, supra, 392 U.S. at 19, n. 16. The California Supreme Court's interpretation of *Terry* injects a subjective requirement that makes the officer's mental state a part of the analysis. This Court expressly rejected such a requirement when it rejected the "target of the investigation" approach in *Rakas v. Illinois, supra,* 439 U.S. at 426-428, and reaffirmed the strictly objective standard in *Whren v. United States, supra*: "Subjective intentions play no role in ordinary, probable-cause Fourth Amendment analysis." *Whren v. United States, supra,* 517 U.S. at 813.[4]

Likewise, the California majority cites *Florida v. Bostick* for the proposition that the submission to authority must not be the result of some independent force. *People v. Brendlin, supra,* 38 Cal.4th at 1118. The holding in *Bostick*, however, is inapplicable to the facts of this case, because the facts of that case did not present a situation in which the individual's "freedom of action" had been curtailed in the first place. The passenger in *Bostick* was sitting on a bus that was about to leave the station; the officer's actions in

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[4]Although this Court did not address the issue in *Whren*, the challenge to the traffic stop in that case was brought by both the passenger and the driver of the vehicle, and the Court analyzed the Fourth Amendment rights of both passenger and driver under an objective standard.

that case did not impede the passenger's movement in any way. Moreover, this Court declined to determine whether or not a seizure had occurred in that case, but merely held that the fact that the encounter occurred on a bus was not dispositive of the issue. *Florida v. Bostick, supra,* 501 U.S. at 438.

The majority opinion in *Brendlin* distinguished this Court's statements in *Berkemer v. McCarty, supra,* 468 U.S. 420, to the effect that a traffic stop curtails the freedom of action of both drivers and passengers by noting that "that *Berkemer*'s observation was made in the context of whether a motorist detained pursuant to a traffic stop was in custody for purposes of the *Fifth* Amendment." *People v. Brendlin, supra,* 38 Cal.4th at 1117 (emphasis in original). But the full quote from *Berkemer* clearly applies to the Fourth Amendment:

> It must be acknowledged at the outset that a traffic stop significantly curtails the "freedom of action" of the driver and the passengers, if any, of the detained vehicle. Under the law of most States, it is a crime either to ignore a policeman's signal to stop one's car or, once having stopped, to drive away without permission. E. g., Ohio Rev. Code Ann. § 4511.02 (1982). Certainly few motorists would feel free either to disobey a directive to pull over or to leave the scene of a traffic stop without being told they might do so. Partly for these reasons, we have long acknowledged that "stopping an automobile and detaining its occupants constitute a 'seizure' within the meaning of [the Fourth] [Amendment], even though the purpose of the stop is limited and the resulting detention quite brief."

Berkemer v. McCarty, supra, 468 U.S. at 435, quoting *Delaware v. Prouse, supra,* 440 U.S. at 653 (internal footnotes omitted, brackets in original). Contrary to the California Supreme Court's assertion, this Court was specifically describing the standard for

determining whether a seizure had occurred under the *Fourth* Amendment; the Court then went on to distinguish the stronger showing necessary to establish that a prisoner was "in custody" for purposes of the *Fifth* Amendment. *Berkemer v. McCarty, supra,* 468 U.S. at 437-438. The California court thus erred in dismissing this Court's observations in *Berkemer* as to what constitutes a Fourth Amendment "seizure."

By contrast, the California court relied heavily on *County of Sacramento v. Lewis*, 523 U.S. 833, 118 S.Ct. 1708, 140 L.Ed.2d 1043 (1998), a case which does not address the issue of when a passenger is detained for purposes of the Fourth Amendment, and instead addresses the issue of "whether a police officer violates the Fourteenth Amendment's guarantee of substantive due process by causing death through deliberate or reckless indifference to life in a high-speed automobile chase aimed at apprehending a suspected offender." *Id.*, 523 U.S. at 836. In *County of Sacramento*, this Court reviewed a civil rights suit filed under 42 U.S.C.S. § 1983 against a law enforcement officer who had struck and injured a passenger who had been riding on a pursued suspect's motorcycle. In finding that the passenger had not been deprived of due process under the Fourteenth Amendment, this court emphasized that the officer had not acted in bad faith: "in such circumstances only a purpose to cause harm unrelated to the legitimate object of arrest will satisfy the element of arbitrary conduct shocking to the conscience, necessary for a due process violation." *Ibid.*

The California Supreme Court seized upon the somewhat tangential holding in *County of Sacramento* that no Fourth Amendment seizure occurred when the officer struck the passenger with his motorcycle. *People v. Brendlin, supra,* 38 Cal.4th at 1117, citing *County of Sacramento v. Lewis, supra,* 523 U.S. at 844. This Court's holding in *County of Sacramento* did not depend upon the injured person being a passenger rather than the intended target of the stop; rather, the Court simply reiterated the unremarkable conclusion that "no Fourth Amendment seizure would take place where a 'pursuing police car sought to stop the suspect only by the show of authority represented by flashing lights and continuing pursuit,' but accidentally stopped the suspect by crashing into him." *County of Sacramento v. Lewis, supra,* 523 U.S. at 844, citing *Brower v. County of Inyo,* 489 U.S. 593, 597, 109 S. Ct. 1378, 103 L. Ed. 2d 628 (1989).

More importantly, the *Brower* case upon which *County of Sacramento* relied undermines the California Supreme Court's conclusions significantly when it states, without qualification, that "[a] seizure occurs even when an unintended person or thing is the object of the detention or taking." *Brower v. County of Inyo, supra,* 489 U.S. at 596, citing *Maryland v. Garrison,* 480 U.S. 79, 107 S.Ct. 1013, 94 L.Ed.2d 72 (1987) and *Hill v. California,* 401 U.S. 797, 91 S.Ct. 1106, 28 L.Ed.2d 484 (1971). The majority opinion in *Brendlin* cites *Brower* in support of the conclusion that an officer's use of force in curtailing an individual's freedom of movement must be "intentionally applied." *People v. Brendlin, supra,* 38 Cal.4th at 1115-1116. The *Brower* opinion, however, in no way

supports the proposition that "intentionally applied" means that the officer intended to stop a particular person: "We think it enough for a seizure that a person be stopped by the very instrumentality set in motion or put in place to achieve that result." *Brower v. County of Inyo, supra,* 489 U.S. at 599. The fortuitous detention of a passenger constitutes a seizure under the reasoning of *Brower.*

Nor does this Court's decision in *California v. Hodari D., supra*, compel a different result. The California majority opinion cites *Hodari D.* in support of the proposition that a passenger is not seized by virtue of a traffic stop, because a seizure requires an "actual taking into custody" or a "submission to authority" before a person may be considered to have been "seized" for purposes of the Fourth Amendment, and since it is the driver who submits to the police authority by stopping the car, the passenger can not be said to have been seized. *People v. Brendlin, supra*, 38 Cal.4th at 1121, n. 4, citing *California v. Hodari D., supra,* 499 U.S. at 626-627. *Hodari D.*, however, addressed a very narrow question: whether a suspect who fails to yield to an officer's show of force has been "seized." This court held that the a suspect who continues to flee has not been seized, and did so in the context of a broader examination of various types of government action that may constitute a seizure. *Hodari D., supra*, 499 U.S. at 624-625. However, that discussion addressed the physical seizure of a person by police, and did not address the scenario in which a car and its occupants are seized by the action of an officer making a traffic stop.

Finally, the California Supreme Court lists several hypothetical situations in which it determines that it would be "absurd" to find that a seizure had occurred within the meaning of the Fourth Amendment:

> A police detention of an orderly pushing a wheelchair-bound individual or a detention of a parent pushing a child in a stroller may well incidentally curtail the freedom of action of the passengers who are dependent on those adults. The detention of the orderly or parent will also, to use the dissent's phrasing, "interrupt [the] journey" (dis. opn., post, at p. 1124) of the wheelchair or the stroller. But it is absurd to say that either passenger has thereby been seized within the meaning of the Fourth Amendment.

People v. Brendlin, supra, 38 Cal.4th at 1117. The majority answers the wrong question, however. Of course the passengers in the hypothetical scenarios have been detained and thereby seized by any legal or dictionary definition[5]; but for a deliberate police action curtailing their freedom of action by force or show of authority, those passengers would not have been stopped and would have continued on their way.

The flaw in the *Brendlin* majority's reasoning is that the hypothetical focuses on whether a seizure has occurred, rather than on whether the seizure was *reasonable*. This Court has held that even the most brief police-initiated delay constitutes a detention; this is a distinct inquiry from the issue of whether such a detention is reasonable. *See Mich. Dep't of State Police v. Sitz* 496 U.S. 444, 450, 110 S. Ct. 2481, 110 L. Ed. 2d 412 (1990).

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[5]A detention is "[t]he act or fact of holding a person in custody; confinement or compulsory delay." *Black's Law Dictionary*, p.459 col.2 (7th ed. 1999). Certainly a person delayed by a police stop of the vehicle in which is a passenger has been subjected to a "compulsory delay."

The Fourth Amendment protects no person, whether passenger or driver, against seizures that are reasonable, and if the detention is reasonable as to the driver (or as to the parent or orderly), then certainly that detention is reasonable as to an incidentally seized passenger, as well.

But if the police action is unreasonable at its inception, as the People conceded was the case here (*People v. Brendlin, supra,* 38 Cal.4th at1114)[6], then that action is unreasonable as to all parties who have had their freedom of action interrupted by the unlawful police conduct. This Court should grant this petition for writ of certiorari in order to correct California's erroneous interpretation of this Court's precedents.

C. The Decision of the California Supreme Court Is at Odds with the Holdings of Those Federal Circuits That Have Considered the Issue of Whether a Passenger May Challenge an Unlawful Traffic Stop

Although this Court has never directly addressed the issue of whether a passenger in a car subjected to a traffic stop may raise a Fourth Amendment challenge to that stop by virtue of the fact that he was "detained" when the driver submitted to the officer's show of authority and stopped the car, an overwhelming majority of federal circuit courts to have considered the issue have found that a passenger may challenge a traffic stop

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[6]The California Vehicle Code specifically authorizes the legal operation of a vehicle on a public street or highway where the vehicle displays a temporary operating permit or sticker in lieu of a license plate. Veh. Code, § 4853. Under section 4853, all provisions of the Vehicle Code relating to license plates also apply to temporary operating permits, so that in legal effect a temporary operating permit functions as an alternative to the license plates required on motor vehicles. See also California Vehicle Code § 4606.

under these circumstances. *See, e.g., United States v. Mosley, supra*, 454 F.3d 249; *United States v. Grant*, 349 F.3d 192 (5th Cir. 2003); *United States v. Ameling*, 328 F.3d 443 (8th Cir. 2003); *United States v. Twilley*, 222 F.3d 1092, 1095 (9th Cir. 2000); *United States v. Gama-Bastidas*, 142 F.3d 1233 (10th Cir. 1998); *United States v. Sowers*, 136 F.3d 24 (1st Cir. 1998); *United States v. Brown*, 102 F.3d 1390 (5th Cir.1996); *United States v. Eylicio-Montoya*, 70 F.3d 1158, 1164 (10th Cir. 1995); *United States v. Kimball*, 25 F.3d 1, 5 (1st Cir. 1994); *United States v. Roberson*, 6 F.3d 1088, 1091 (5th Cir. 1993), *cert. denied*, 511 U.S. 1010, 114 S. Ct. 1383, 128 L. Ed. 2d 58 (1994); *United States v. Rusher*, 966 F.2d 868 (4th Cir. 1992); *United States v. Powell*, 929 F.2d 1190, 1195 (7th Cir. 1991), *cert. denied*, 502 U.S. 981, 116 L.Ed.2d 609, 112 S.Ct. 584; *United States v. Erwin*, 875 F.2d 268, 270-271 (10th Cir. 1989); *United States v. Durant*, 730 F.2d 1180 (8th Cir.1984); *United States v. Williams*, 589 F.2d 210, 214 (5th Cir.1979); *cf. United States v. DeLuca*, 269 F.3d 1128, 1134 (10th Cir. 2001); *see also* 6 Wayne R. LaFave, Search and Seizure § 11.3 (4th ed. 2004); *cf. United States v. Hill*, 855 F.2d 664, 666 (10th Cir. 1988) [passenger on boat boarded by police without warrant "clearly may challenge the validity of his own arrest . . . . [and] may therefore claim that evidence found as a fruit of the arrest should be excluded."].)

Just a month after the California Supreme Court issued its opinion in *Brendlin*, a Third Circuit panel noted that every federal circuit to have considered the issue had concluded that "when a vehicle is illegally stopped by the police, no evidence found

during the stop may be used by the government against any occupant of the vehicle unless the government can show that the taint of the illegal stop was purged." *United States v. Mosley, supra,* 454 F.3d at 251; *see also Wong Sun v. United States*, 371 U.S. 471, 83 S.Ct. 407, 9 L.Ed.2d 441 (1963). In joining those circuits, the *Mosley* court distinguished cases involving automobile passengers in which no illegal stop was established or alleged. *See, e.g., Rakas v. Illinois, supra,* 439 U.S. at 130-132, and *Whren v. United States, supra,* 517 U.S. 806.

The *Mosley* opinion, like the California Supreme Court decision in *Brendlin*, contains a lengthy examination of the relevant authorities; the *Mosley* court, however, begins its analysis with the conclusion that California rejects: that a passenger is seized by virtue of a traffic stop. In fact, the issue of whether the passenger is "seized" appears to be a given even in the cases distinguished by *Mosley*, and the court noted the government's concession that the passenger had "a reasonable expectation that he would not be seized without probable cause." *United States v. Mosley, supra,* 454 F.3d at 257. The court had no difficulty in distinguishing those cases that have held that a passenger lacks a sufficient possessory interest to challenge the search of a car:

> [W]e should not be distracted by the fact that this case involves evidence found in a car. This is not an "auto search" case. The search of the car is not before us; the seizure of Mosley is. This case is about an illegal seizure by the police of the defendant, pursuant to which evidence was discovered. The violation of Mosley's Fourth Amendment rights was the traffic stop itself, and it is settled law that a traffic stop is a seizure of everyone in the stopped vehicle, see *Delaware v. Prouse*, 440 U.S. 648, 653, 99 S. Ct. 1391, 59 L. Ed. 2d 660 (1979). Thus passengers in an illegally stopped vehicle have "standing" to object to the stop, and may seek to suppress the evidentiary fruits of that illegal seizure under the fruit of the poisonous tree doctrine, as expounded in the line of cases following *Wong Sun v. United States*, 371 U.S. 471, 83 S. Ct. 407, 9 L. Ed. 2d 441 (1963).

United States v. Mosley, supra, 454 F.3d at 253 (footnotes omitted).

Having thus disposed of the "seizure" issue, the court addressed itself to the issue of how a court should determine whether a particular passenger is entitled to suppression of evidence seized following a traffic stop, canvassing the relevant authorities to review the methods employed in the various federal circuits. The *Mosley* court distinguished the holding in *United States v. DeLuca, supra*, 269 F.3d 1128, which adopted a relatively complex "factual nexus" test to determine whether a passenger who was illegally detained during a traffic stop was entitled to suppress the fruits of the search of the vehicle. As the *Mosley* court noted, the distinguishing factor in *DeLuca*, as in *Rakas* and *Whren*, was that the traffic stop was not illegal in its inception, and thus the passenger was required to established a "but for" connection between his unlawful detention and the seizure of the evidence he sought to suppress. *United States v. Mosley, supra,* 454 F.3d at 256, *citing United States v. DeLuca, supra,* 269 F.3d at 1134.

This analytical model, the *Mosley* court held, was inappropriate for a case involving an unlawful traffic stop. *United States v. Mosley, supra,* 454 F.3d at 256. The court observed that "most courts treat evidence found during an illegal traffic stop as fruits of that stop, and see no conceptual difficulties in suppressing such evidence when introduced against passengers." *Id.*, at 257. After reviewing in great detail the various legal frameworks under which such a scenario could be analyzed, the *Mosley* court ultimately settled on the most simple answer:

> The car in which Mosley was riding was pulled over illegally. Mosley was illegally seized the moment the car was pulled over. The stopping of the vehicle was a but-for cause of the discovery of the guns. The bubble of causation which links a traffic stop to a subsequent search extends to all occupants of the stopped vehicle. To overcome Mosley's suppression motion, therefore, the government would have had to establish one of the traditional exceptions to the *Wong Sun* rule: attenuation, inevitable discovery, independent source, or some intervening act or event sufficient to purge the taint of the illegal stop. The government raised no such exception at trial, and raises none on appeal. We therefore hold that the guns were fruit of the poisonous tree and must be suppressed.

United States v. Mosley, supra, 454 F.3d at 269.

Had the California Supreme Court adopted the majority view regarding a passenger's "seizure" at the time of a traffic stop, Mr. Brendlin would have been entitled to suppression of the results of the search under any of the standards discussed in *Mosley*. The search of the car and of Mr. Brendlin's person were undertaken incident to Mr. Brendlin's arrest. Mr. Brendlin's arrest was a direct result of the unreasonable traffic stop and the resulting detention while the deputy determined whether Mr. Brendlin was

wanted for a parole violation. Thus, the seized items are causally related to the illegal traffic stop, and moreover the prosecution produced no evidence sufficient to purge the taint of the traffic stop. Under either the rationale of the *Mosley* opinion or the more restrictive rationale of the cases cited therein, Mr. Brendlin was entitled to suppression of the evidence.

Although the *Mosley* opinion contains by far the most thorough analysis of a passenger's right to move to suppress the fruits of an illegal traffic stop, most other courts have reached the same conclusion. For instance, the Ninth Circuit in *United States v. Twilley* likewise rejected an argument that an automobile passenger lacked "standing" to challenge a search of the car. The *Twilley* court held that because the defendant challenged the initial stop, which implicated his own liberty interests, he could challenge a subsequent search of the car as the fruit of the poisonous tree. *United States v. Twilley, supra,* 222 F.3d at 1095; see also *United States v. Colin*, 314 F.3d 439, 442-443 (9th Cir. 2002).

In *United States v. Kimball*, the First Circuit found the defendant's status as a passenger to be "of no consequence" in terms of his ability to challenge a traffic stop:

> The interest in freedom of movement and the interest in being free from fear and surprise are personal to all occupants of the vehicle, and an individual's interest is not diminished simply because he is a passenger as opposed to the driver when the stop occurred.

United States v. Kimball, supra, 25 F.3d at 7.

The Fifth Circuit found that a passenger could challenge an auto stop in *United States v. Roberson, supra,* 6 F.3d 1088: "Whereas the search of an automobile does not implicate a passenger's fourth amendment rights, a stop results in the seizure of the passenger and driver alike. Thus, a passenger of a stopped automobile does have standing to challenge the seizure as unconstitutional." *Id.* at 1091 (footnote omitted). That court noted that its holding reflected the majority (perhaps the unanimous) view of the federal circuit courts:

> Heretofore we have implied but not expressly so ruled. E.g., *United States v. Cardona*, 955 F.2d 976 (5th Cir.) (finding no standing to challenge search but reaching merits of challenge to stop), cert. denied, 121 L.Ed.2d 291, 113 S.Ct. 381 (1992). Our circuit colleagues have been more direct. E.g., *United States v. Erwin*, 875 F.2d 268 (10th Cir. 1989); *United States v. Portwood*, 857 F.2d 1221 (8th Cir. 1988), cert. denied, 490 U.S. 1069, 104 L.Ed.2d 638, 109 S.Ct. 2073 (1989). Accord, *United States v. Clark*, 822 F. Supp. 990 (W.D.N.Y. 1993); *United States v. Lawson*, 782 F. Supp. 1546 (S.D.Fla. 1992). See also *United States v. Powell*, 929 F.2d 1190, 1195 (7th Cir.) (citing *Erwin* and "numerous state courts" that have concluded that a passenger has standing to challenge a vehicle stop), cert. denied, 116 L.Ed.2d 609, 112 S.Ct. 584 (1991).

United States v. Roberson, supra, 6 F.3d at 1091, n. 6.

The Seventh Circuit has also noted the well-established nature of the right of a passenger to challenge a traffic stop in spite of this Court's failure to rule directly on the issue. In *United States v. Powell*, that court reported that numerous state courts had found such a right. *United States v. Powell, supra*, 929 F.2d at 1195. The court went on to describe in some detail the nature of the right implicated by a traffic stop:

> By contrast to the expectation of privacy in places and things implicated by a search, the interests implicated by a vehicle stop are motorists' "freedom from random, unauthorized, investigatory seizures," *Michigan Dept. of Police v. Sitz*, 496 U.S. 444, 110 L.Ed.2d 412, 110 S.Ct. 2481, 2492 (1990) (Stevens, J., dissenting), and the interest in avoiding the "substantial anxiety," *Delaware v. Prouse*, 440 U.S. 648, 657, 59 L.Ed.2d 660, 99 S.Ct. 1391 (1979), these stops may create. Both these interests are personal to the driver and passengers in the car stopped, who have their travel interrupted by the sight of a state patrol cruiser or police car looming large in the rear view mirror, are detained on the side of the road, have their identifying documents inspected by the trooper or policeman, and may even be asked to leave their vehicles for the duration of the questioning, see *Pennsylvania v. Mimms*, 434 U.S. 106, 54 L.Ed.2d 331, 98 S.Ct. 330 (1977).

United States v. Powell, supra, 929 F.2d at 1195.

In short, every federal circuit court to have considered the issue has disagreed with the position adopted by the California Supreme Court. This Court should grant the writ of certiorari in order to resolve this conflict of laws.

D. The Decision of the California Supreme Court Is at Odds with the Holdings of Most Other State Courts to Have Considered the Issue

As with the federal circuit courts, the vast majority of states to pass on the issue have held that passengers are seized in a traffic stop and may challenge both the legality of the stop and the admissibility of evidence obtained therefrom. *See, e.g., People v. Bunch*, 764 N.E.2d 1189, 1193 (Ill.App. 2002); *State v. Gomez,* 6 P.3d 765, 766 (Ariz. App. 2000); *State v. Bowers*, 976 S.W.2d 379, 381 (Ark. 1998); *State v. Harris*, 557 N.W.2d 245 (Wis. 1996); *State v. Carter*, 630 N.E.2d 355, 360-361 (Ohio 1994); *State v. Wilson*, 867 P.2d 1175, 1179 (N.M. 1994); *State v. Higgins*, 884 P.2d 1242, 1244 (Utah 1994); *Howard v. State,* 888 S.W.2d 166, 172 (Tex.Ct.App.1994); *State v. Stott*, 503

N.W.2d 822, 828 (Neb. 1993), *overruled on other grounds*, *State v. Johnson*, 589 N.W.2d 108 (Neb. 1999); *State v. Krebs*, 504 N.W.2d 580 (S.D. 1993); *McKnight v. State*, 612 N.E.2d 586, 588 (Ind.Ct.App.1993); *Ott v. State*, 600 A.2d 111 (Md. 1992), *cert. denied*, 506 U.S. 904, 113 S. Ct. 295, 121 L. Ed. 2d 219 (1992); *State v. Creech*, 806 P.2d 1080, 1082 (N.M. App. 1991); *State v. Harms*, 449 N.W.2d 1, 4 (Neb. 1989); *State v. Epperson*, 703 P.2d 761, 770-771 (Kan. 1985); *State v. Haworth*, 679 P.2d 1123, 1123-24 (Id. 1984); *State v. Eis,* 348 N.W.2d 224, 226 (Iowa 1984); *People v. Lagrone*, 464 N.E.2d 712, 714 (Ill.App. 1984); *People v. Kunath,* 425 N.E.2d 486, 489-490 (Ill.App. 1981); *State v. DeMasi,* 419 A.2d 285, 294-95 (R.I. 1980), *cert. granted and rev'd on other grounds*, 452 U.S. 934, 101 S.Ct. 3072, 69 L.Ed.2d 948 (1981).

Other state court decisions have expressly distinguished a passenger's ability to challenge a search or detention that follows a legal traffic stop from the passenger's right to challenge a search or detention following a stop that was unreasonable from its inception. Those courts are unanimous in noting that a passenger may challenge a search that is the fruit of an unlawful traffic stop. *See, e.g., State v. Wilson,* 678 N.W.2d 176, 181 (S.D. 2004); *State v. Malone*, 683 N.W.2d 1, 8 (Wis. 2004); *Kothe v. State,* 152 S.W.3d 54, 62, n. 19 (Tex. 2004); *State v. Cooper*, 579 S.E.2d 754, 756 (Ga. 2003); *State v. Hickman*, 763 A.2d 330, 336-337 (N.J. 2001); *Scott v. State*, 877 P.2d 503, 508 (Nev. 1994); *Arnold v. Commonwealth,* 437 S.E.2d 235, 237 (Va.App. 1993); *State v. Ryan*, 788

P.2d 1327, 1329 (Id. 1990); *State v. Becker*, 458 N.W.2d 604, 607 (Iowa 1990); *People v. Manke*, 537 N.E.2d 13, 15 (Ill.App. 1989).

Still other states have not addressed the issue directly because they have found that a passenger may raise such a claim under state constitutional law. *E.g., Parkhurst v. State*, 628 P.2d 1369 (Wyo. 1981); *cf. People v. Millan*, 508 N.E.2d 903, 904 (N.Y. 1987) [passenger may challenge unlawful stop of taxi cab]. By far the prevailing view in the United States, then, is to find that a passenger is seized by virtue of a traffic stop, and in the event that such a stop is unreasonable, to permit the passenger to move to suppress the fruits of that seizure.

The California Supreme Court acknowledged that only two other courts had taken the position that a passenger in a car subject to a traffic stop is not seized under the Fourth Amendment. *People v. Brendlin*, *supra*, 38 Cal.4th at 1115, citing *People v. Jackson*, *supra*, 39 P.3d 1174, and *State v. Mendez*, *supra*, 970 P.2d 722; *see also Jarvis v. State*, 600 A.2d 38, 41, n.1 (Del.1991) [passenger has no "standing" to challenge stop of vehicle but may challenge subsequent detention of her person]. In *People v. Jackson*, the Colorado Supreme Court expressly approved the reasoning in *People v. Cartwright*, 72 Cal.App.4th 1362, 85 Cal.Rptr. 2d 788 (1999), a decision from the Court of Appeal of California, Fourth Appellate District, Division Three. *People v. Jackson*, *supra*, 39 P.3d at 1185. *Cartwright* in turn relied on *Maryland v. Wilson*, 519 U.S. 408, 117 S.Ct. 882, 137 L.Ed.2d 41 (1997), in which this Court expanded its holding from *Pennsylvania v.*

Mimms 434 U.S. 106, 98 S.Ct. 330, 54 L Ed.2d 331 (1977) and held that a passenger in a detained vehicle may, for reasons of officer safety, be ordered out of the vehicle on the same basis as the driver. In *People v. Cartwright,* the Fourth Appellate District contextualized the *Wilson* holding as follows:

> In holding that officers are entitled to order passengers out of a car as a matter of course, the majority recognized that when a traffic stop occurs, "There is probable cause to believe that the driver has committed a minor vehicular offense, but there is no such reason to stop or detain the passengers." (*Maryland v. Wilson, supra*, 519 U.S. at p. 413 [117 S.Ct. at p. 886, 137 L.Ed.2d at p. 47].) By noting the absence of any objective justification to detain passengers in cars stopped for traffic violations, however, the court obviously did not mean to imply that passengers are routinely subjected to illegal seizures. We believe it was saying passengers are not "detained" as the law uses that term.

People v. Cartwright, supra, 72 Cal.App.4th at 1367. The *Cartwright* court's quotation from *Wilson* is misleading, however, because it omits the language immediately following the passage quoted above: "But as a practical matter, the passengers are already stopped by virtue of the stop of the vehicle." *Maryland v. Wilson, supra,* 519 U.S. at 413. In its full context, then, the holding in *Wilson* does not support an inference that a passenger is not detained by virtue of a traffic stop, and *Cartwright* is not persuasive authority.

The Colorado Supreme Court concluded in *Jackson* that a passenger is not detained by a traffic stop because "a traffic stop is an investigatory stop of the driver; the display of authority and control is directed at the driver, not the passenger." *People v. Jackson, supra,* 39 P.3d at 1185. The court further concluded that because the show of authority is directed at the driver, a reasonable passenger would feel free to leave or to

terminate the encounter. *Id.* at 1186. Given this Court's holding in *Wilson* that an officer may order a passenger out of the car during a traffic stop as a matter of course, *with no additional suspicion of wrongdoing*, this conclusion regarding what a reasonable passenger would believe appears to be untenable at best. *See Maryland v. Wilson, supra,* 519 U.S. at 410.

The *Jackson* decision also relied upon its own precedent in *People v. H. J.*, 931 P.2d 1177 (Colo. 1997), a case involving a legitimate, non-pretextual traffic stop in which the officers only began to suspect the passenger of wrongdoing after they began their investigation. Although the only issue in *H. J.* was "whether the questioning of the passengers . . . was lawful under the totality of the circumstances surrounding the vehicle stop," the court noted in passing that "[g]enerally, the detention of the passengers in a stopped vehicle is merely coincidental with the detention of the driver." *H. J., supra*, 931 P.2d at1181. Whether the passengers had been seized in the stop was not material to the *H. J.* decision given that the stop itself was proper, and the court never determined whether the passengers had been seized or not.

In *Jackson*, however, the Colorado Supreme Court held that *H. J.* "implicitly recognized that passengers, unlike drivers, are not seized within the meaning of the Fourth Amendment" when the *H.J.* court stated that "an officer need not initially have reasonable suspicion as to all the occupants in the car and that the detention of passengers is merely coincidental with the detention of the driver." *Jackson, supra*, 39 P.3d at 1185.

This reasoning is unpersuasive. The fact that an officer is not suspicious of a passenger before the stop says nothing about whether the passenger is seized by the stop itself, and the fact that a passenger's detention is "coincidental" does not alter the fact that he was, indeed, detained. *Cf. Berkemer v. McCarty, supra*, 468 U.S. at 436.

The only other jurisdiction to hold that passengers are not seized in a traffic stop is the state of Washington. In *State v. Mendez, supra*, 970 P.2d 722, the Washington Supreme Court reversed an order granting a passenger's motion to suppress, saying that "the trial court's conclusion Mendez was seized by the traffic stop is clearly wrong." *Id.*, 970 P.2d at 729. But this decision, too, was based on a misunderstanding of *Maryland v. Wilson*. *State v. Mendez*, like *People v. Cartwright*, relied on a passage in *Wilson* in which this court focuses on the justification for the seizure, rather than on whether a seizure had occurred: "There is probable cause to believe that the driver has committed a minor vehicular offense, but there is no such reason to stop or detain the passengers." *Wilson, supra*, 519 U.S. at 413-414, quoted in *Mendez, supra*, 970 P.2d at 729. But the fact that officers have no equivalent *reason* to stop the passenger does not alter the fact that they *do* stop the passenger along with the driver and the rest of the car.

Like the California Supreme Court in *Brendlin*, the Washington Supreme Court disregarded *Whren, supra*, by making the officer's state of mind part of the analysis. And like the *Cartwright* court and the California Supreme Court in *Brendlin*, both the Colorado and Washington courts make the error of conflating the issue of whether a

passenger has been *reasonably* detained with the issue of whether he has been detained at all. In doing so, these courts part ways with the overwhelming weight of state and federal authorities. This Court should grant certiorari to resolve this conflict.

CONCLUSION

The petition for writ of certiorari should be granted.

Dated: November 27, 2006

Respectfully submitted,

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APPENDIX A

SUPREME COURT
FILED

JUN 29 2006

Frederick K. Ohlrich Clerk

Deputy

COPY

IN THE SUPREME COURT OF CALIFORNIA

THE PEOPLE, Plaintiff and Respondent, v. BRUCE EDWARD BRENDLIN, Defendant and Appellant.	S123133 Ct.App. 3 C040754 Sacramento County Super. Ct. No. CRF012703

When a peace officer directs the driver of a vehicle to pull over for a traffic stop but, in effecting the stop, gives no indication that the passenger of the vehicle is the focus of the officer's investigation or show of authority, is the passenger subjected to a "seizure" within the meaning of the Fourth Amendment? This is a question that has divided courts inside and outside this state. We find that the passenger, whose progress is momentarily stopped as a practical matter, is not seized as a constitutional matter in the absence of additional circumstances that would indicate to a reasonable person that he or she was the subject of the peace officer's investigation or show of authority. We therefore reverse the judgment of the Court of Appeal, which (1) held that the passenger was automatically seized as a result of the traffic stop, (2) determined that the traffic stop was unlawful, and (3) suppressed the evidence of methamphetamine manufacturing found in the car and on defendant's person as the fruit of the illegal seizure.

SEE DISSENTING OPINION

BACKGROUND

Around 1:40 a.m. on November 27, 2001, Sutter County Sheriff's Deputy Robert Charles Brokenbrough effected a traffic stop of a brown 1993 Buick Regal with expired registration tabs on Franklin Avenue in Yuba City. Prior to the stop, Deputy Brokenbrough confirmed through dispatch that the car's registration had expired two months earlier but that an application was "in process" to renew the registration. Although Deputy Brokenbrough observed that a temporary operating permit with the number "11" (indicating an expiration date at the end of November) had been taped to the rear window, he could not determine from his vantage point whether the permit matched the vehicle and decided to stop the Buick to investigate further.

Deputy Brokenbrough approached the driver's side of the Buick and asked the driver, Karen Simeroth, for her driver's license. He also asked defendant, the passenger, to identify himself, since he recognized defendant as one of the Brendlin brothers, Scott or Bruce, and recalled that one of them had absconded from parole supervision. During the inquiry, Deputy Brokenbrough observed receptacles in the car containing substances used in the production of methamphetamine. In response to the deputy's inquiry, defendant falsely identified himself as Bruce Brown. The deputy returned to his patrol vehicle and verified that Bruce Brendlin was a parolee at large and had an outstanding no-bail warrant for his arrest. During this period, defendant opened and then closed the passenger door of the Buick.

After requesting backup, Deputy Brokenbrough pointed his weapon at defendant, ordered him out of the car, and placed him under arrest for the parole violation. The entire episode, from the time Deputy Brokenbrough asked Simeroth for her driver's license to his discovery that defendant had an outstanding warrant, lasted a couple of minutes.

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Police found an orange syringe cap on defendant's person during a search incident to arrest. They found two hypodermic needles (one of which was missing a syringe cap), two baggies containing a total of 12.43 grams of marijuana, and a baggie containing 0.46 grams of methamphetamine on Simeroth's person during a patsearch and a subsequent search incident to her arrest. Materials used in manufacturing methamphetamine were found in the back seat of the Buick.

After a hearing on defendant's motion to suppress, the superior court held that defendant had not been seized within the meaning of the Fourth Amendment until Deputy Brokenbrough ordered him out of the car at gunpoint and placed him under arrest: "He was free to leave. And if he had opened the door and got out and taken a hike, then this officer would have had to decide whether he had something less than probable cause to detain him, and then he would have been detained. But he wasn't detained because he never went anywhere; but he had a right to if he wanted to." The court determined next that even if defendant had been seized at an earlier point, the traffic stop was lawful; even if the stop had been unlawful, defendant, as a passenger, lacked standing[1] to suppress the items seized from the Buick.

Following the denial of his motion to suppress, defendant pleaded guilty to manufacturing methamphetamine (Health & Saf. Code, § 11379.6, subd. (a)) and

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1 The United States Supreme Court has largely abandoned use of the word "standing" in its Fourth Amendment analysis. (See *Minnesota v. Carter* (1998) 525 U.S. 83, 87-88.) "It did so without altering the nature of the inquiry: whether the defendant, rather than someone else, had a reasonable expectation of privacy in the place searched or the items seized." (*People v. Ayala* (2000) 23 Cal.4th 225, 254, fn. 3.) We have embraced the high court's formulation and no longer analyze this substantive issue as one of standing. (*Ibid.*; *People v. Valdez* (2004) 32 Cal.4th 73, 121, fn. 24.)

admitted a prior prison term enhancement (Pen. Code, § 667.5, subd. (b)). He was sentenced to four years in prison.

The Court of Appeal reversed in a published opinion. It held that a traffic stop necessarily results in a detention (and, hence, a seizure (*People v. Glaser* (1995) 11 Cal.4th 354, 363)) of both the driver and the passengers, rejecting the analysis and holdings of *People v. Castellon* (1999) 76 Cal.App.4th 1369, 1373-1374; *People v. Cartwright* (1999) 72 Cal.App.4th 1362, 1367-1369; and *People v. Fisher* (1995) 38 Cal.App.4th 338, 343-344. The Court of Appeal further found that the stop was unlawful in that Deputy Brokenbrough, who knew that the vehicle's application to renew its registration was in process and who had seen the temporary permit in the rear window, had "at most a hunch" that "the temporary operating permit displayed in the window might not belong to the car and, thus, it was being unlawfully operated as an unregistered vehicle." The court ruled that the evidence seized from defendant as well as from the Buick should have been suppressed.

We granted review, limited to (1) whether defendant, as a passenger in a vehicle subjected to a traffic stop, was seized within the meaning of the Fourth Amendment; and (2) whether reasonable suspicion exists that a car is unregistered when it exhibits an expired registration tab on its license plate but displays what appears to be a valid temporary operating permit in its rear window.

DISCUSSION

"In ruling on a motion to suppress, the trial court must find the historical facts, select the rule of law, and apply it to the facts in order to determine whether the law as applied has been violated. (*People v. Ayala* (2000) 24 Cal.4th 243, 279 [99 Cal.Rptr.2d 532, 6 P.3d 193].) We review the court's resolution of the factual inquiry under the deferential substantial evidence standard. The ruling on whether the applicable law applies to the facts is a mixed question of law and fact that is

subject to independent review. (*Ibid.*)" (*People v. Ramos* (2004) 34 Cal.4th 494, 505.)[2] In evaluating whether the fruits of a search or seizure should have been suppressed, we consider only the Fourth Amendment's prohibition on unreasonable searches and seizures. (*People v. Carter* (2005) 36 Cal.4th 1114, 1141.) "The proponent of a motion to suppress has the burden of establishing that his own Fourth Amendment rights were violated by the challenged search or seizure." (*Rakas v. Illinois* (1978) 439 U.S. 128, 131, fn. 1.)

Prior to the vehicle stop here, Deputy Brokenbrough noticed that the registration tabs on the Buick's license plate were expired. However, he also observed a current temporary operating permit in the car's rear window and had received radio confirmation that an application for renewal of the vehicle's registration was indeed in process. Conceding that "[a] vehicle with an

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[2] State courts and the lower federal courts are divided as to the appropriate standard of review of a finding that a seizure has or has not occurred. Many courts hold that this is a question of law or a mixed question of law and fact subject to de novo review. (*U.S. v. Smith* (1st Cir. 2005) 423 F.3d 25, 31, fn. 4; *id.* at p. 36 & fn. 9 (dis. opn. of Lynch, J.) [citing cases from the Second, Third, Sixth, Eight, Tenth, and District of Columbia Circuits]; *LaDuke v. Nelson* (9th Cir. 1985) 762 F.2d 1318, 1327; accord, *State v. Kachanian* (Hawai'i Ct.App. 1995) 896 P.2d 931, 938; *State v. Harris*, (Minn. 1999) 590 N.W.2d 90, 98; *State v. Jason L.* (N.M. 2000) 2 P.3d 856, 863; *State v. Carter* (Utah Ct.App. 1991) 812 P.2d 460, 465, fn. 3; *McGee v. Com.* (Va.Ct.App. 1997) 487 S.E.2d 259, 261; *State v. Thorn* (Wn. 1996) 917 P.2d 108, 111; *State v. Garcia* (Wis.Ct.App. 1995) 535 N.W.2d 124, 126.) Other courts hold that this is a question of fact subject to review for substantial evidence or clear error. (*U.S. v. Mask* (5th Cir. 2003) 330 F.3d 330, 335; *U.S. v. Wilson* (4th Cir. 1991) 953 F.2d 116, 121; *U.S. v. Teslim* (7th Cir. 1989) 869 F.2d 316, 321; accord, *Lindsay v. State* (Alaska Ct.App. 1985) 698 P.2d 659, 661; *State v. Hill* (Conn. 1996) 675 A.2d 866, 871; *State v. Raker* (Fla.Dist.Ct.App. 2004) 883 So.2d 887, 888-889.) Because the parties here do not address the issue—and because our decision would be the same under either standard—we find it unnecessary to resolve the conflict. (See *U.S. v. Boone* (5th Cir. 1995) 67 F.3d 76, 77, fn. 1.)

application for renewal of expired registration would be expected to have a temporary operating permit," the Attorney General no longer argues that Deputy Brokenbrough had articulable suspicion the Buick's registration was invalid. The Attorney General argues instead that defendant has no entitlement to suppression of the evidence uncovered during the traffic stop because he, as a passenger, was not seized within the meaning of the Fourth Amendment until Deputy Brokenbrough ordered him out of the car at gunpoint and arrested him under the outstanding no-bail warrant, which provided lawful cause for the seizure. Defendant, on the other hand, argues that he was seized at the moment the driver submitted to the show of official authority and stopped the car, which preceded the deputy's discovery of the outstanding warrant.[3]

It is well settled that the driver of a vehicle that is the subject of a traffic stop is seized within the meaning of the Fourth Amendment. (*Whren v. United States* (1996) 517 U.S. 806, 809-810.) Neither this court nor the United States Supreme Court, however, has yet decided whether the driver's submission to the show of authority results in a seizure of the *passenger*. A majority of courts, including several federal circuit courts and some state courts, have embraced a per se rule that the passenger is seized at the moment the driver submits to the official show of authority. (E.g., *U.S. v. Twilley* (9th Cir. 2000) 222 F.3d 1092, 1095; *U.S. v. Eylicio-Montoya* (10th Cir. 1995) 70 F.3d 1158, 1163-1164; *U.S. v. Kimball* (1st Cir. 1994) 25 F.3d 1, 5; *U.S. v. Roberson* (5th Cir. 1993) 6 F.3d 1088, 1091; *U.S.*

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3 Defendant concedes that, as a mere passenger, his Fourth Amendment rights were not violated by the search of his codefendant's vehicle. (*Rakas v. Illinois*, *supra*, 439 U.S. at pp. 133, 148; accord, *People v. Valdez*, *supra*, 32 Cal.4th at p. 122.) He claims instead that suppression of the incriminating evidence found in the car is required because it was the fruit of an unlawful seizure of his person.

v. Powell (7th Cir. 1991) 929 F.2d 1190, 1195; *State v. Hernandez* (Fla.Dist.Ct.App. 1998) 718 So.2d 833, 836; *People v. Bunch* (Ill. 2003) 796 N.E.2d 1024, 1029; *State v. Eis* (Iowa 1984) 348 N.W.2d 224, 226; *State v. Carter* (Ohio 1994) 630 N.E.2d 355, 360; *Josey v. State* (Tex.Crim.App. 1998) 981 S.W.2d 831, 837-838; see also 6 La Fave, Search and Seizure (4th ed. 2004) § 11.3(e), pp. 194-195, fn. 277 [citing cases].) Other courts, reasoning that the passenger in a vehicle subject to a traffic investigation is stopped for practical purposes but not by virtue of the show of official authority, hold that the passenger is not seized for Fourth Amendment purposes. (E.g., *People v. Jackson* (Colo. 2002) 39 P.3d 1174, 1184-1186; *State v. Mendez* (Wn. 1999) 970 P.2d 722, 729; see also 6 La Fave, Search and Seizure, *supra*, § 11.3(e), p. 193, fn. 272 [citing cases].)

This division of authority is reflected in the courts of our own state. Some courts agree with defendant that the interference with the passenger's freedom of movement occasioned by the traffic stop constitutes a seizure. (*People v. Bell* (1996) 43 Cal.App.4th 754, 765; *People v. Hunt* (1990) 225 Cal.App.3d 498, 505; *People v. Grant* (1990) 217 Cal.App.3d 1451, 1457-1458.) Other courts agree with the Attorney General that although the driver must submit to the officer's instructions, the passenger is free to disregard the police and go about his or her business, and that the incidental restriction of the passenger's freedom of movement is therefore not a seizure. (*People v. Castellon*, *supra*, 76 Cal.App.4th at p. 1374; *People v. Cartwright*, *supra*, 72 Cal.App.4th at p. 1369 (*Cartwright*); *People v. Fisher*, *supra*, 38 Cal.App.4th at p. 344; *People v. Gonzalez* (1992) 7 Cal.App.4th 381, 384.)

At the heart of this debate lies the definition of a seizure in the Fourth Amendment's prohibition on "unreasonable searches and seizures." Justice Stewart's opinion in *United States v. Mendenhall* (1980) 446 U.S. 544, 554, which

has been adopted by the court in subsequent cases (e.g., *Michigan v. Chesternut* (1988) 486 U.S. 567, 573), states that "a person has been 'seized' within the meaning of the Fourth Amendment only if, in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave." (Fn. omitted.) The high court subsequently made clear that this test "states a *necessary*, but not a *sufficient*, condition for seizure." (*California v. Hodari D.* (1991) 499 U.S. 621, 628 (*Hodari D.*).) That is, there must also be an actual taking into custody, whether by the application of physical force or by submission to the assertion of authority. (*Id.* at p. 626.) The court has also cautioned against an undue focus on the fact that government action caused some restriction on an individual's freedom of movement: " 'a Fourth Amendment seizure does not occur whenever there is a governmentally caused termination of an individual's freedom of movement . . . , nor even whenever there is a governmentally caused and *desired* termination of an individual's freedom of movement . . . , but only when there is a governmental termination of freedom of movement *through means intentionally applied*.' " (*County of Sacramento v. Lewis* (1998) 523 U.S. 833, 844, quoting *Brower v. County of Inyo* (1989) 489 U.S. 593, 596-597.) Finally, the court has reminded us that where the individual may not feel free to leave for reasons *independent* of the police conduct—such as a passenger on a bus that is scheduled to depart shortly—the proper inquiry is "whether, taking into account all of the circumstances surrounding the encounter, the police conduct would 'have communicated to a reasonable person that he was not at liberty to ignore the police presence and go about his business.' " (*Florida v. Bostick* (1991) 501 U.S. 429, 437; accord, *People v. Celis* (2004) 33 Cal.4th 667, 673.)

It is passing strange, then, that defendant focuses so little attention on the definition of a seizure. Defendant (like the Court of Appeal below and the other

cases embracing the majority view) instead advances an argument that rests on two other foundations: (1) dicta from United States Supreme Court decisions; and (2) the fact that a traffic stop curtails the freedom of movement of the passenger as well as the driver.

Although defendant concedes that the high court has not decided whether a passenger is necessarily seized by virtue of a traffic stop, he asserts that dicta from the high court has "strongly hinted" in that direction. In *Delaware v. Prouse* (1979) 440 U.S. 648, 653, for example, the court observed that "stopping an automobile and detaining its occupants constitute a 'seizure' within the meaning of [the Fourth] Amendment[], even though the purpose of the stop is limited and the resulting detention quite brief." (See also *Berkemer v. McCarty* (1984) 468 U.S. 420, 436-437 [quoting *Prouse*].) In *Colorado v. Bannister* (1980) 449 U.S. 1, 4, footnote 3, the court reiterated that "[t]here can be no question that the stopping of a vehicle and the detention of its occupants constitute a 'seizure' within the meaning of the Fourth Amendment," citing *Prouse*. There is no debate here, though, whether a traffic stop results in a seizure. The issue, rather, is *who* (or what) has been seized. Inasmuch as *Bannister* and *Berkemer* involved the driver of the vehicle (*Bannister*, *supra*, 449 U.S. at p. 4; *Berkemer*, *supra*, 468 U.S. at p. 423) and *Prouse*, according to the opinion of the state supreme court, involved the owner and "operator" of the vehicle (*Prouse*, *supra*, 440 U.S. at p. 650, fn. 1), none of these cases is particularly illuminating on the status of a mere passenger.

Defendant, like the courts embracing the majority view, also relies on the observation in *Berkemer v. McCarty*, *supra*, 468 U.S. at page 436, that "a traffic stop significantly curtails the 'freedom of action' of the driver and the passengers, if any, of the detained vehicle." It is important to recognize, however, that *Berkemer*'s observation was made in the context of whether a motorist detained pursuant to a traffic stop was in custody for purposes of the *Fifth* Amendment.

(*Id.* at p. 435.) Whether a person is in custody for purposes of the Fifth Amendment is an inquiry distinct from whether a person has been seized within the meaning of the Fourth Amendment. (*U.S. v. Sullivan* (4th Cir. 1998) 138 F.3d 126, 131 ["The 'custody' that implicates the *Miranda* rule is conceptually distinct from a seizure implicating the Fourth Amendment"]; *U.S. v. Smith* (7th Cir. 1993) 3 F.3d 1088, 1097 [the determination of custody under the Fifth Amendment requires "a completely different analysis" from that under the Fourth Amendment].) Indeed, as the high court has emphasized, " 'a governmentally caused termination of an individual's freedom of movement' " does not necessarily establish that a seizure under the Fourth Amendment has occurred. (*County of Sacramento v. Lewis, supra*, 523 U.S. at p. 844.) A police detention of an orderly pushing a wheelchair-bound individual or a detention of a parent pushing a child in a stroller may well incidentally curtail the freedom of action of the passengers who are dependent on those adults. The detention of the orderly or parent will also, to use the dissent's phrasing, "interrupt [the] journey" (dis. opn., *post*, at p. 1) of the wheelchair or the stroller. But it is absurd to say that either passenger has thereby been seized within the meaning of the Fourth Amendment.

The cases embracing the majority view also assert that "[n]o principled basis exists for distinguishing between the privacy rights of passengers and drivers in a moving vehicle. When the vehicle is stopped they are equally seized; their freedom of movement is equally affected." (*State v. Eis*, *supra*, 348 N.W.2d at p. 226; see also *People v. Bell*, *supra*, 43 Cal.App.4th at p. 763.) In reality, though, the passenger is not subject to the same restraints as the driver. The driver is obliged to remain at the scene until the completion of the officer's investigation. "[T]he passenger is stopped too, but only coincidentally." (*People v. Jackson*, *supra*, 39 P.3d at p. 1185.) Absent further direction from the officer effecting the stop (see *Maryland v. Wilson* (1997) 519 U.S. 408, 410) or some indication that

the passenger is the subject of the officer's investigation or show of authority, the passenger is free to ignore the police presence and go about his or her business. Alternatively, the passenger may choose to wait until the investigation of the driver is completed. In either case, "it is this element of choice that distinguishes the passenger's circumstance from the driver's, for the driver has been seized and is therefore not free to go." (*Jackson*, *supra*, at p. 1185.) The fact that defendant's freedom of movement was momentarily curtailed by the traffic stop thus does not determine whether he was seized. To answer that question we must return to the high court's definition of a "seizure."

A seizure occurs when the police, by the application of physical force or show of authority, seek to restrain the person's liberty (*Terry v. Ohio* (1968) 392 U.S. 1, 19, fn. 16; *County of Sacramento v. Lewis*, *supra*, 523 U.S. at p. 844); the police conduct communicated to a reasonable innocent person that the person was not free to decline the officer's request or otherwise terminate the encounter (*Florida v. Bostick*, *supra*, 501 U.S. at p. 436); and the person actually submitted to that authority (*Hodari D.*, *supra*, 499 U.S. at p. 626) for reasons not "independent" of the official show of authority (*Florida v. Bostick*, *supra*, 501 U.S. at p. 436). Admittedly, the application of this test to particular circumstances is sometimes more an art than a science. (See *Michigan v. Chesternut*, *supra*, 486 U.S. at p. 573 [the test "is necessarily imprecise"].) As the high court has emphasized, "for the most part *per se* rules are inappropriate in the Fourth Amendment context. The proper inquiry necessitates a consideration of 'all the circumstances surrounding the encounter.' " (*United States v. Drayton* (2002) 536 U.S. 194, 201; accord, *People v. Souza* (1994) 9 Cal.4th 224, 235.) In this case, defendant has not shown that he, as the passenger, was the subject of the deputy's show of authority or that he actually submitted to it.

Deputy Brokenbrough's flashing lights were directed at the driver, Karen Simeroth, and not at defendant. Indeed, the record does not indicate that Brokenbrough was even aware defendant was in the car prior to the vehicle stop. Once the car came to a stop, the deputy approached the driver's side of the vehicle, without blocking defendant's exit, brandishing a weapon at him, or making any intimidating movements towards him. In these circumstances, one cannot say that defendant was the subject of the deputy's investigation or show of authority prior to the time the deputy ordered him out of the vehicle. (See *United States v. Drayton*, *supra*, 536 U.S. at pp. 203-204 [no seizure occurred when officers boarded the bus and began questioning passengers].)

Rather, "[a]n officer causing a vehicle to pull over in transit is conducting an investigatory stop of the *driver*." (*People v. Jackson*, *supra*, 39 P.3d at p. 1182, italics added.) "[T]he display of authority and control is directed at the driver, not the passenger." (*Id.* at p. 1185.) "While we are all familiar with the sinking feeling a driver experiences upon seeing police lights in the rearview mirror, few of us sense impending doom when we are in the passenger seat." (*Cartwright*, *supra*, 72 Cal.App.4th at pp. 1374-1375; see also *People v. Jackson*, *supra*, at p. 1185.) Thus, as the dissent concedes, "[a] passenger may not be the subject of a police investigation, at least in the initial phase of the traffic stop." (Dis. opn., *post*, at p. 2.)

More importantly, defendant, as the passenger, had no ability to submit to the deputy's show of authority. As the *Cartwright* court noted, the passenger "is not a participant in the stop, but an observer." (*Cartwright*, *supra*, 72 Cal.App.4th at p. 1375.) Not only is the driver the one the officer is seeking to restrain, but the driver is the only one who, by stopping the car, can submit to the officer's assertion of authority. The passenger may be asleep or otherwise unaware of the officer's presence. The passenger may disagree with the driver's decision to

submit to the officer's authority and may even object vociferously, but to no effect. "The passenger simply has no say in the matter." (*Id.* at p. 1367.)

To be sure, the passenger must in most cases remain in the car until it stops, and to that extent (as the dissent points out) the passenger's freedom is curtailed. But it is critical, for purposes of the Fourth Amendment analysis, to determine *why* the passenger's freedom is curtailed. Although defendant points out that "it is simply not possible for a passenger to avoid being literally and physically detained under these circumstances, however momentarily," this is so because, under the vast majority of circumstances, it is unsafe for the passenger to exit a moving vehicle. The passenger will also, in most cases, prefer to await the completion of the traffic stop and continue en route in the company of the driver. Neither factor, however, means that the passenger has been seized within the meaning of the Fourth Amendment. (*Florida v. Bostick*, *supra*, 501 U.S. at p. 436 ["Bostick's freedom of movement was restricted by a factor independent of police conduct—*i.e.*, by his being a passenger on a bus"]; see generally *United States v. Drayton*, *supra*, 536 U.S. at p. 206 ["The arrest of one person does not mean that everyone around him has been seized by police"].) The "liberty" contemplated by the high court's definition of a seizure—i.e., "when, 'taking into account all of the circumstances surrounding the encounter, the police conduct would "have communicated to a reasonable person that he was not at *liberty* to ignore the police presence and go about his business" ' " (*Kaupp v. Texas* (2003) 538 U.S. 626, 629 italics added)—refers not to whether the individual has the physical *capacity* to leave the scene but to whether, assuming the individual had the physical capacity to do so, he or she would feel free to depart or otherwise to conduct his or her affairs as though the police were not present. (See *Bostick*, *supra*, 501 U.S. at p. 436 [that "Bostick's movements were 'confined' . . . says nothing about whether or not the police conduct at issue was coercive"].) After all, an individual may

manifest an unwillingness to engage with the police not only by departing the area, but also by staying put and declining to answer questions or otherwise ignoring police inquiries. Similarly, a seizure can occur even though the individual has the physical capacity to leave the scene.

Neither defendant nor the dissent ever explains why the same analysis should not apply to the detention of a *moving* vehicle containing a driver and passenger and the detention of a *parked* vehicle containing a driver and passenger—or, for that matter, the detention of a motorcycle or a bicycle with a driver and passenger. (Cf. *United States v. Drayton*, *supra*, 536 U.S. at p. 204 [that the encounter took place on a bus rather than on the street "does not on its own transform standard police questioning of citizens into an illegal seizure"].) Absent some directive from the police, and as long as the rules of the road are otherwise obeyed, the passenger is free to do what the driver cannot—i.e., exit the vehicle or dismount from the motorcycle or bicycle and thereby terminate the encounter with the officer. (Cf. *U.S. v. Slater* (8th Cir. 2005) 411 F.3d 1003, 1005 [passenger was not seized while driver took field sobriety tests].) In this case, for example, defendant indicated his awareness of the available options by opening, and then closing, the passenger door.

The distinction between a passenger whose progress is stopped because the driver is seized and a passenger who is himself or herself seized is consistent with the high court's analysis in *Maryland v. Wilson*, *supra*, 519 U.S. 408, which addressed the separate issue whether a police officer may as a matter of course order not just the driver to exit the vehicle during a traffic stop, but the passengers as well. The high court found that in light of the interest in officer safety, ordering the passenger out of the vehicle was not an unreasonable seizure, but declined to decide whether the passenger could be held for the entire duration of the stop. (*Id.* at p. 415, fn. 3.) The high court did, however, acknowledge one important

distinction between the driver and the passengers: "There is probable cause to believe that the driver has committed a minor vehicular offense, but there is no such reason to stop or detain the passengers. But *as a practical matter*, the passengers are already stopped by virtue of the stop of the vehicle." (*Id.* at pp. 413-414, italics added.) Justice Stevens's dissenting opinion agreed with the majority's implied distinction between being stopped as a *practical* matter and being seized as a *constitutional* matter: the intrusion on a passenger's freedom of movement occasioned by the traffic stop "was a necessary by-product of the lawful detention of the driver. But the passengers had not yet been seized at the time the car was pulled over, any more than a traffic jam caused by construction or other state-imposed delay not directed at a particular individual constitutes a seizure of that person." (*Id.* at p. 420 (dis. opn. of Stevens, J.).)

The rule proposed by the defendant and endorsed by the Court of Appeal and the dissent here, in which a seizure occurs whenever the defendant's freedom of movement "is significantly curtailed by an officer's act of making the driver stop the car," would find a seizure in these circumstances of state-imposed delay. Indeed, the proposed rule would encompass even those motorists following the vehicle subject to the traffic stop who, by virtue of the original detention, are forced to slow down and perhaps even come to a halt in order to accommodate that vehicle's submission to police authority. It would be inaccurate to say that these motorists, whose journey is interrupted by virtue of the traffic stop of another vehicle but who do not actually submit to the show of police authority, are seized within the meaning of the Fourth Amendment. The same is true of a

passenger such as defendant, who likewise suffers a curtailment of his freedom but does not actually submit to the show of police authority.[4]

Defendant's proposed rule would also make unduly problematic the determination of when a seizure has ended. He asserts that "[w]hether a passenger remains detained thereafter may depend upon whether, under the circumstances, a reasonable person would feel free to leave while the officer deals with the driver." But very rarely does the officer affirmatively express an investigative interest (or lack thereof) in the passengers of a detained vehicle. The officer's interest in such circumstances, as defendant concedes, is with the driver. This suggests that, under defendant's approach, the alleged seizure of a passenger must terminate of its own accord, either by the passage of time or by the officer's focus on the driver. If the seizure terminates simply by the passage of time, then the question arises of how

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[4] The dissent asserts that the requirement of submission "simply does not apply in these circumstances" (dis. opn., *post*, at p. 3), but, as the high court has made clear, a seizure "requires *either* physical force . . . *or*, where that is absent, *submission* to the assertion of authority. [¶] . . . 'There can be no arrest without either touching or submission.' " (*Hodari D.*, *supra*, 499 U.S. at pp. 626-627.)

Moreover, the dissent's analysis would effectively diminish protections for passengers. If, as the dissent contends, a traffic stop inflexibly results in a seizure of the passengers until the officer explicitly says otherwise, then any passenger who nonetheless tried to proceed on his or her way could be arrested under Penal Code section 148 (and then subjected to a search incident to the arrest) for resisting or delaying the officer in the performance of his or her duties. (See, e.g., *In re Muhammad C.* (2002) 95 Cal.App.4th 1325, 1329; *People v. Quiroga* (1993) 16 Cal.App.4th 961, 967.) We think it more sensible to leave it up to the officer, once cause for the vehicle stop has been established, to decide who should be seized and when. And, in light of the high court's "clear direction that an assessment as to whether police conduct amounts to a seizure implicating the Fourth Amendment must take into account ' "all of the circumstances surrounding the incident" ' in each individual case" (*Michigan v. Chesternut*, *supra*, 486 U.S. at p. 572), it is also more appropriate to examine the totality of the circumstances before determining whether the passenger has been seized during a traffic stop.

many minutes the passengers must wait. If, on the other hand, the seizure terminates at the end of the traffic stop or as soon as the officer tells the passengers they are free to leave, then it follows that the passengers are *also* at liberty to go about their business if, at an even earlier stage, the passengers can reasonably draw that same inference about the focus of the officer's investigation or show of authority. In this case, for example, defendant reasonably would have surmised that Deputy Brokenbrough was focused on the driver when the traffic stop was initiated. Because defendant knew he was free to ignore the police presence and go about his business at that stage, even if he was unable as a practical matter to leave the scene until the car came to a halt, he could not have been seized merely by the initiation of the traffic stop.

The dissent would find that passengers generally, and defendant in particular, are seized from the inception of every traffic stop, but the dissent's reasoning is faulty. Although the dissent concedes that a passenger may not be the subject of the police investigation, at least in the initial phase of the traffic stop, it contends that a seizure nonetheless occurs because "the officer *has the authority*, as a matter of law, to order that the passengers . . . get out of the vehicle" once the vehicle pulls over. (Dis. opn., *post*, at p. 1, italics added.) We do not doubt the officer has such authority, which is recognized explicitly in *Maryland v. Wilson*, *supra*, 519 U.S. at page 410, nor do we dispute that the passenger is seized once the officer *actually invokes that authority to order the passenger out of the car*. But the dissent offers no authority for its critical assumption that the mere *potential* an officer *might* invoke such authority itself constitutes a seizure.

The dissent also asserts that the failure to deem a passenger automatically seized in every traffic stop will lead to anomalous consequences in that the driver, who has been seized, will be able to suppress the fruits of an unlawful seizure, but the passenger, who has not been seized, may not be able to obtain such relief. If

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this is an anomaly, it is hardly unique, inasmuch as the potential for unequal treatment has existed under similar circumstances ever since the high court abolished automatic standing. In *Rakas v. Illinois*, *supra*, 439 U.S. 128, for example, the high court held that mere passengers—unlike drivers or owners of the vehicle—had no legitimate expectation of privacy that was violated by a vehicle search. (*Id.* at pp. 148-149; accord, *People v. Valdez*, *supra*, 32 Cal.4th at p. 122). The high court has also remarked that a casual visitor would similarly be unable to challenge a house search (*Rakas*, *supra*, at p. 142; accord, *People v. Ooley* (1985) 169 Cal.App.3d 197, 202-203; see also *People v. Ayala*, *supra*, 23 Cal.4th at p. 255 [invitee or social guest has no expectation of privacy in business premises]), although the owner or other residents would be able to do so.

Thus, the Fourth Amendment does not concern itself with "treat[ing] driver and passenger alike" in all circumstances (dis. opn., *post*, at p. 5), nor does assuring equity between drivers and passengers justify expanding the reach of the exclusionary rule beyond what the Fourth Amendment requires. (See *Alderman v. United States* (1969) 394 U.S. 165, 174 ["There is no necessity to exclude evidence against one defendant in order to protect the rights of another"].) " 'Each time the exclusionary rule is applied it exacts a substantial social cost for the vindication of Fourth Amendment rights. Relevant and reliable evidence is kept from the trier of fact and the search for truth at trial is deflected.' " (*In re Lance W.* (1985) 37 Cal.3d 873, 882, quoting *Rakas v. Illinois*, *supra*, 439 U.S. at p. 137.) Accordingly, "the deterrent purpose of the exclusionary rule does not require its application when unlawfully seized evidence is offered against a defendant whose own rights have not been compromised by the unlawful seizure." (*Lance W.*, at p. 882.)

We emphasize that passengers who are in vehicles subjected to unjustified traffic stops are not without constitutional protection. Once the vehicle has been

stopped, the passenger may not be detained thereafter without reasonable suspicion the passenger is involved in criminal activity. (*People v. Souza*, *supra*, 9 Cal.4th at p. 230; cf. *Maryland v. Wilson*, *supra*, 519 U.S. at p. 410 [police may order the driver and passengers of a "lawfully stopped" car to exit the vehicle].) Furthermore, neither the passenger nor the passenger's belongings in the vehicle may be searched without lawfully acquired cause to justify an arrest (*New York v. Belton* (1981) 453 U.S. 454) or a search (*Wyoming v. Houghton* (1999) 526 U.S. 295). A passenger in a car subjected to an unjustified stop may also be able to prosecute a civil suit against the police under the rubric of substantive due process. (See *County of Sacramento v. Lewis*, *supra*, 523 U.S. at pp. 844-845.) There is thus no need to torture the definition of a seizure to protect the security of passengers.

We therefore hold that because the deputy effected a traffic stop of Simeroth's vehicle without any indication that defendant, the vehicle's passenger, was the subject of his investigation or show of authority, defendant was not seized when Simeroth submitted to the deputy's show of authority and brought the vehicle to a stop. Because defendant claims only that the traffic stop itself constituted a seizure, we need not consider whether defendant was seized when Deputy Brokenbrough asked him to identify himself or whether, assuming such conduct constituted a seizure, it was justified by the deputy's reasonable suspicion that he was a parolee at large.

DISPOSITION

The judgment of the Court of Appeal is reversed.

BAXTER, J.

WE CONCUR:

GEORGE, C.J.
KENNARD, J.
CHIN, J.

COPY

PEOPLE V. BRENDLIN

S123133

DISSENTING OPINION BY CORRIGAN, J.

I respectfully dissent. Passengers in a vehicle pulled over for a traffic stop are not free to leave, in either a practical or a constitutional sense. Certainly no one can safely leave the vehicle before it stops. Once it has pulled over, the officer has the authority, as a matter of law, to order that the passengers remain inside (*People v. Castellon* (1999) 76 Cal.App.4th 1369, 1374-1375), or get out of the vehicle (*Maryland v. Wilson* (1997) 519 U.S. 408, 410). This authority is soundly based on the need to protect the officer's safety. One of its necessary consequences, however, is that the passengers, having been forced to interrupt their journey, are deprived of further freedom of movement. Accordingly, the passengers have been detained and thus "seized" for Fourth Amendment purposes.

The precedents cited by the majority support this conclusion, or are distinguishable. Under the *Mendenhall* test, a person is detained if, under the circumstances, "a reasonable person would have believed that he was not free to leave." (*United States v. Mendenhall* (1980) 446 U.S. 544, 554.) When a police officer effects a traffic stop, a passenger's freedom of movement has been restrained by the intentional act of a government agent. (*County of Sacramento v. Lewis* (1998) 523 U.S. 833, 844.) The passenger is detained for a reason that is not "independent of police conduct." (*Florida v. Bostick* (1991) 501 U.S. 429, 436.) Indeed, the passenger's freedom of movement is abruptly interrupted precisely because of the officer's conduct.

The situation was quite different in *Bostick*. There, the defendant was a passenger sitting on a parked bus. When the officers boarded he was going nowhere. His freedom of movement was not curtailed by anything the officers said or did. (*Florida v. Bostick*, *supra*, 501 U.S. at pp. 431-432, 436.) Further, the *Bostick* court did not hold that there was no seizure. It simply rejected the state court's conclusion that officers may not ask bus passengers for consent to search. (*Id.* at p. 437.) As Justice O'Connor pointed out for the majority, well-settled Fourth Amendment jurisprudence would have allowed the officers to ask Bostick for his consent to search in the terminal, on the street, or in an airport. (*Id.* at p. 434.) The mere fact that consent to search was sought on a parked bus was not dispositive.

California v. Hodari D. (1991) 499 U.S. 621 does hold that submission to governmental authority is required for a detention to take place. Hodari and other young men were standing on a street and fled when police drove by. Hodari discarded contraband as he ran from an officer. The Court of Appeal suppressed the evidence on the ground that Hodari was detained when he saw the officer running toward him. (*Id.* at pp. 622-623.) The United States Supreme Court reversed, ruling that when a suspect does not yield to a show of authority, no seizure occurs. (*Id.* at p. 626.) Flight is clearly not the same as submission. However, the *Hodari D.* court had no occasion to consider anything like the situation of passengers during a traffic stop.

A passenger may not be the subject of a police investigation, at least in the initial phase of the traffic stop.[1] Passengers are detained for a different and equally important purpose: to ensure the safety of the officer. The actual

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[1] In some cases, of course, the officer initiates a traffic stop to investigate a passenger. (See, e.g., *In re William J.* (1985) 171 Cal.App.3d 72, 77.) In those cases, the vehicle's occupants will often be unaware of the reason for the stop. Nevertheless, the rule adopted in the majority opinion requires the suspect to realize that he or she is the focus of the officer's investigation for the Fourth Amendment to apply.

submission requirement discussed by the *Hodari D.* court simply does not apply in these circumstances, which present entirely distinct practical and legal considerations.[2] Individuals on the street submit to an officer's authority by stopping or remaining in place in response to the officer's directions. An individual who sees a policeman and runs away has demonstrably not submitted to police authority.

Vehicle passengers are in a different situation. They stop when the car stops. If the driver pulls over in response to an officer's show of authority, the passengers' freedom of movement is curtailed to the same extent as the driver's. As the majority notes, "a police officer may as a matter of course order not just the driver to exit the vehicle during a traffic stop, but the passengers as well." (Maj. opn., *ante*, at p. 14; see *Maryland v. Wilson*, *supra*, 519 U.S. at p. 410.) The officer may also order the passengers to stay in the car. (*People v. Castellon*, *supra*, 76 Cal.App.4th at pp. 1374-1375; *United States v. Moorefield* (3rd Cir. 1997) 111 F.3d 10, 12-13.)[3] This per se rule, based on the need to ensure officer

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[2] The majority reasons that if passengers are detained during a traffic stop for Fourth Amendment purposes, they would be subject to prosecution for "fleeing from a proper investigative detention" (Pen. Code, § 148) if they attempt to leave the scene. (Maj. opn., *ante*, at pp. 15-16, fn. 4.) However, that liability would arise only after a passenger became the subject of the officer's investigation. For this purpose, the rule proposed by the majority functions well. Penal Code section 148 would apply to passengers who flee in circumstances that would indicate they were the subject of the officer's investigation.

[3] While the United States Supreme Court has yet to address whether passengers may be ordered to remain in a vehicle during a traffic stop, the reasoning of the *Castellon* and *Moorefield* courts on this point is sound. The same considerations of officer safety that justify the rule authorizing the removal of passengers from a vehicle support allowing the officer to keep the passengers inside. (*People v. Castellon*, *supra*, 76 Cal.App.4th at pp. 1374-1375; *United States v. Moorefield*, *supra*, 111 F.3d at p. 13; see also *State v. Shearin* (N.C.Ct.App. 2005) 612 S.E.2d 371, 377-378 [citing cases]; cf. *Maryland v. Wilson*, *supra*, 519 U.S at p. 413.) A rule permitting passengers to leave the vehicle and wander around outside the officer's field of vision during a traffic stop would be a dangerous one indeed.

safety, requires no showing of reasonable suspicion. (*Maryland v. Wilson*, *supra*, 519 U.S at p. 412.) Driver and passenger alike are "subjected to the demands and control of the police officer" during the stop. (*United States v. Kimball* (1st Cir. 1994) 25 F.3d 1, 5.)

The *Wilson* court observed that "[o]n the personal liberty side of the balance, the case for the passengers is in one sense stronger than that for the driver. There is probable cause to believe that the driver has committed a minor vehicular offense, but there is no such reason to stop or detain the passengers." (*Maryland v. Wilson*, *supra*, 519 U.S at p. 413.) The court decided the intrusion on passengers' liberty is nevertheless justified, partly because "as a practical matter, the passengers are already stopped by virtue of the stop of the vehicle." (*Id.* at p. 414.) By stopping the vehicle, the officer has exerted authority over everyone in it. Because the liberty interest of passengers is *stronger* than that of drivers, they too should be afforded the protections of the Fourth Amendment.

To conclude that passengers are free to leave the scene until an officer actually exercises the authority granted by *Wilson* (maj. opn., *ante*, at p. 17), overlooks the fact that the officer has already interfered with the passengers' freedom of movement. It is not, as the majority suggests, the mere potential that an officer might order a passenger out of the car that results in a detention. It is also the prior actual application of the officer's authority in pulling the vehicle over. The stop gives rise to the officer's legitimate power under *Wilson* and *Castellon* to control the passengers' movements without any particularized justification. That official control differentiates passengers detained during a traffic stop from other citizens who are only incidentally impeded by an exercise of state authority. (See maj. opn., *ante*, at p. 15.)

I would disapprove *Castellon*, however, insofar as it held that passengers are not detained from the inception of a traffic stop. (*People v. Castellon*, *supra*, 76 Cal.App.4th at pp. 1373-1374.)

The majority's approach leads to anomalous consequences. For example, when an officer pulls over a car, the driver and passengers may all be considered to be in constructive possession of contraband found in the vehicle. Under the majority's rule, however, the driver would be protected by the Fourth Amendment but the passengers would not, even though the Supreme Court has described the passengers' liberty interest as stronger than the driver's. The majority also bars passengers from challenging the traffic stop if the officer arrests them before exerting any authority under *Wilson*, but would permit passengers to challenge the stop if the grounds for arrest were discovered after the officer gave directions controlling their movements. It is true, as the majority observes, that Fourth Amendment jurisprudence is not free of anomaly. (Maj. opn., *ante*, at p. 18.) However, when given the opportunity, we should eschew incongruity. Surely consistency is preferable to anomaly.

I would hold that passengers are "seized" from the time a car is pulled over until the officer ends the restraint on their liberty, either by telling them they are free to leave or by releasing the occupants of the vehicle after completing the traffic stop. This approach satisfies the majority's concern with determining when a seizure ends. (Maj. opn., *ante*, at p. 16.) It provides a clear and easily applied rule, and imposes no additional burdens on law enforcement. It is consistent with the policy of granting police officers broad latitude to control the movements of passengers during traffic stops. It treats driver and passenger alike, protecting and clarifying their rights and obligations.

The majority contends such a per se rule is inconsistent with Fourth Amendment jurisprudence requiring consideration of all the circumstances of the individual case in determing whether there has been a "seizure." (Maj. opn., *ante*, at p. 16, fn. 4.) However, the *Wilson* court made an express exception to the usual practice of avoiding bright-line rules in the Fourth Amendment context when it decided that passengers, like drivers, may routinely be ordered to leave the vehicle during a traffic stop. (*Maryland v. Wilson*, *supra*, 519 U.S at p. 413, fn. 1.) The

per se rule of *Wilson* justifies the rule proposed here. Because, as a matter of law, passengers' freedom of movement is subject to the control of the officer during a traffic stop, passengers should be permitted as a matter of law to challenge the legality of the stop. No conflict with the body of Fourth Amendment law arises from this commonsense approach. Further, the analysis takes into account the most relevant circumstance: the passengers' freedom has been limited by the officer's exercise of authority.

The majority expresses concern about unduly expanding the reach of the exclusionary rule. (Maj. opn., *ante*, at p. 18.) However, no evidence discovered during the course of a legally justified traffic stop would be affected if we held that passengers are seized along with drivers. The majority acknowledges that most jurisdictions have accepted that rule, and the weight of authority on this point is indeed substantial. Eight of the federal circuit courts of appeal hold that passengers are detained during a traffic stop.[4] There are no cases on point from the other four circuits. Twenty-one state courts have adopted the same view.[5] The

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[4] See *United States v. Woodrum* (1st Cir. 2000) 202 F.3d 1, 5 (characterizing the rule as "doctrinal bedrock"); *United States v. Rusher* (4th Cir. 1992) 966 F.2d 868, 874, footnote 4; *United States v. Grant* (5th Cir. 2003) 349 F.3d 192, 196; *United States v. Perez* (6th Cir. 2003) 440 F.3d 363, 369; *United States v. Powell* (7th Cir. 1991) 929 F.2d 1190, 1195; *United States v. Green* (8th Cir. 2001) 275 F.3d 694, 699; *United States v. Twilley* (9th Cir. 2000) 222 F.3d 1092, 1095; *United States v. Eylicio-Montoya* (10th Cir. 1995) 70 F.3d 1158, 1162-1164.

[5] See *State v. Gomez* (Ariz.Ct.App. 2000) 6 P.3d 765, 766; *State v. Bowers* (Ark. 1998) 976 S.W.2d 379, 381; *State v. Hernandez* (Fla.Dist.Ct.App. 1998) 718 So.2d 833, 836; *State v. Cooper* (Ga.Ct.App. 2003) 579 S.E.2d 754, 756; *State v. Haworth* (Idaho 1994) 679 P.2d 1123, 1124; *People v. Bunch* (Ill. 2003) 796 N.E.2d 1024, 1029; *McKnight v. State* (Ind. Ct.App. 1993) 612 N.E.2d 586, 588; *State v. Eis* (Iowa 1984) 348 N.W.2d 224, 226; *State v. Hodges* (Kan. 1993) 851 P.2d 352, 360-362; *In re Albert S.* (Md.Ct.Spec.App. 1995) 664 A.2d 476, 480-481; *State v. Harms* (Neb. 1989) 449 N.W.2d 1, 4-5; *State v. Scott* (Nev. 1994) 877 P.2d 503, 508; *State v. Creech* (N.M.Ct.App. 1991) 806 P.2d 1080, 1082 (but see *State v. Affsprung* (N.M.Ct.App. 2004) 87 P.3d 1088, 1092-1094); *People v. Smith* (App.Div. 1984) 483 N.Y.S.2d 62, 63; *State v. Carter* (Ohio 1994) 630

majority refers to only two states where its analysis is followed.[6] If the results of permitting passengers to challenge traffic stops were crippling to law enforcement, one would expect the practice to be less widely followed. At least one state, Wisconsin, has reconsidered and rejected its former minority view. (*State v. Harris*, *supra*, 557 N.W.2d at pp. 248, 251.) The majority opinion provides no sound basis in reason or policy to depart from the rule followed in nearly all other jurisdictions that have considered the question. California too should grant passengers the same Fourth Amendment rights as drivers during traffic stops.

CORRIGAN, J.

I CONCUR:

WERDEGAR, J.
MORENO, J.

N.E.2d 355, 360; *State v. Scott* (Or.Ct.App. 1982) 650 P.2d 985, 987, and footnote 4 (relying on statute, but noting that Fourth Amendment protected passenger's expectation not to be stopped without reasonable suspicion); *State v. Wilson* (S.D. 2004) 678 N.W.2d 176, 181; *Kothe v. State* (Tex.Crim.App. 2004) 152 S.W.3d 54, 61; *State v. Harris* (Wis. 1996) 557 N.W.2d 245, 251; *Parkhurst v. State* (Wyo. 1981) 628 P.2d 1369, 1374 (relying on state constitution); *State v. Otteson* (Utah Ct.App. 1996) 920 P.2d 183, 185.

[6] See *People v. Jackson* (Colo. 2002) 39 P.3d 1174, 1184-1186; *State v. Mendez* (Wn. 1999) 970 P.2d 722, 729; maj. opn., *ante*, at page 7.

The Delaware courts appear to acknowledge that the majority opinion's view is technically correct, but nevertheless permit passengers to challenge the basis for a traffic stop. (*Jarvis v. State* (Del. 1991) 600 A.2d 38, 41, fn. 1; *Harris v. State* (Del.Supr.Ct. 2002) 806 A.2d 119, 123, fn. 9.)

In *State v. Affsprung*, *supra*, 87 P.3d at pages 1092-1094, the New Mexico Court of Appeals assumed a passenger was not detained at the same time as a driver, and conducted a fact-specific analysis, without referring to an earlier New Mexico case holding that passengers may challenge the grounds for a traffic stop (*State v. Creech*, *supra*, 806 P.2d at p. 1082).

See next page for addresses and telephone numbers for counsel who argued in Supreme Court.

Name of Opinion People v. Brendlin

Unpublished Opinion
Original Appeal
Original Proceeding
Review Granted XXX 115 Cal.App.4th 206
Rehearing Granted

Opinion No. S123133
Date Filed: June 29, 2006

Court: Superior
County: Sutter
Judge: Christopher R. Chandler

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APPENDIX B

Court of Appeal, Third Appellate District - No. C040754
S123133

IN THE SUPREME COURT OF CALIFORNIA

En Banc

SUPREME COURT
FILED
AUG 30 2006
Frederick K. Ohlrich Clerk
DEPUTY

THE PEOPLE, Plaintiff and Respondent,

v.

BRUCE EDWARD BRENDLIN, Defendant and Appellant.

Petition for rehearing DENIED.

Werdegar, Moreno, and Corrigan, JJ., are of the opinion the petition should be granted.

GEORGE
Chief Justice

APPENDIX C

Filed 1/27/04

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sutter)

THE PEOPLE, Plaintiff and Respondent, v. BRUCE EDWARD BRENDLIN, Defendant and Appellant.	C040754 (Super. Ct. No. CRF012703)

APPEAL from a judgment of the Superior Court of Sutter County, Chris Chandler, J. Reversed.

James F. Johnson, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Jo Graves, Senior Assistant Attorney General, John G. McLean and Clifford E. Zall, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant Bruce Edward Brendlin was the passenger in a car stopped by an officer who had a hunch that the temporary operating permit displayed in the window might not belong to the car and,

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thus, it was being unlawfully operated as an unregistered vehicle. As a result of the vehicle stop, the officer discovered that a warrant had been issued for defendant's arrest. Searches of defendant and the car revealed evidence of drug offenses.

Following the denial of his motion to suppress evidence (Pen. Code, § 1538.5), defendant entered a negotiated plea of guilty to manufacturing methamphetamine (Health & Saf. Code, § 11379.6, subd. (a)) and admitted having served a prior prison term (Pen. Code, § 667.5, subd. (b)). He was sentenced to a term of four years in state prison.

On appeal, defendant claims the trial court erred in denying his suppression motion. We agree. In reaching this conclusion, we reject the holdings in three Court of Appeal opinions which have concluded that a passenger in another person's car cannot contest the validity of a traffic stop of the vehicle. As we will explain, we agree with the majority view that a passenger can challenge the vehicle stop. We further conclude that the stop in this case was unlawful since the facts and inferences therefrom were insufficient to support a reasonable suspicion that the temporary permit was not for that car. Hence, the evidence seized from defendant and the car should have been suppressed because it was the product of the unlawful stop. Accordingly, we shall reverse the judgment.

FACTS

At approximately 1:30 a.m. on November 27, 2001, Deputy Sheriff Robert Brokenbrough saw that a Buick parked in a Circle K market had an expired registration tag. Brokenbrough "ran the plates and they came back expired." Dispatch told him that the expiration date was

September 27, 2001, but that an application was "in process" for renewal of the registration.

Brokenbrough later saw the Buick being driven on Franklin Road. This time he noticed that, in the back window of the car, there was a red Department of Motor Vehicles temporary operating permit with the number "11," representing the month of November. The temporary permit was good until the last day of November 2001.

Based upon his 11 years of experience as a peace officer, Brokenbrough knew that drivers occasionally "remove [such temporary permits] and switch them around on vehicles" in order to avoid fines for expired registrations. Even though there was nothing unusual about the temporary permit on the Buick, e.g., the way it was affixed, to make him believe that it did not belong on the Buick, Brokenbrough "[m]ade a traffic stop" to "verify whether or not that sticker belonged to that vehicle."

Brokenbrough asked both the driver, Karen Simeroth, and the passenger, defendant, to identify themselves. Simeroth handed Brokenbrough her driver's license. Defendant said his name was Bruce Brown; however, from prior contacts, the officer recognized him as being one of the Brendlin brothers, either Scott or Bruce.

Believing that one of the Brendlin brothers was "a parolee at large," Brokenbrough "put Bruce Brendlin's name over the radio." Another officer responded, stating he thought the suspect was "absconding" on parole. When dispatch "confirmed that [defendant]

was a parolee at large," he "was taken into custody at gunpoint."[1] A syringe cap was seized from defendant during a search incident to his arrest. A pat down search of Simeroth revealed that she was possessing two syringes, one without a cap, and a bag containing a green leafy substance. She was placed under arrest.

During a search of the Buick, officers seized various items apparently related to the manufacturing of methamphetamine.

DISCUSSION

In denying defendant's motion to suppress evidence, the trial court found that (1) as just a passenger in the Buick, defendant was not detained until he was arrested when Deputy Sheriff Brokenbrough confirmed that he was a parolee at large, (2) the vehicle stop was lawful because the officer had sufficient cause to believe the car was unregistered, and (3) since defendant was merely a passenger in the Buick, he lacked "standing" to seek suppression of the items seized during a search of the car.

In reviewing a ruling on a motion to suppress, we "defer to the trial court's factual findings, express or implied, where supported by substantial evidence. In determining whether, on the facts so found, the search or seizure was reasonable under the Fourth Amendment, we exercise our independent judgment." (*People v. Glaser* (1995) 11 Cal.4th 354, 362.) "Pursuant to article I, section 28, of the California Constitution, a trial court may

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[1] Evidence established that, at the request of his parole agent, defendant's parole had been suspended and a no bail warrant had been issued for his arrest.

exclude evidence under Penal Code section 1538.5 only if exclusion is mandated by the federal Constitution." (*People v. Banks* (1993) 6 Cal.4th 926, 934.)

Asserting he was detained when Deputy Sheriff Brokenbrough stopped the Buick, defendant claims that the detention which led to the seizure of evidence was unlawful because the facts known to the officer did not give rise to a reasonable suspicion of criminal activity. In defendant's view, he had a reasonable expectation of privacy in the car and, therefore, he had "standing" to challenge its search.

The People retort that defendant "lacks standing to complain about the items seized from the vehicle," and "as to evidence seized from his person, he was not detained until ordered from the car . . . [a]t [a] point [when] the officer had probable cause to detain [him]."

For reasons to follow, we conclude (1) defendant can challenge the stop of the Buick, (2) the stop was unlawful because the facts and inferences therefrom were insufficient to support a reasonable suspicion that the temporary permit was not for the Buick, and (3) the evidence seized from defendant and the Buick should have been suppressed because it was the product of the unlawful stop.

Long ago, the United States Supreme Court emphasized that "'Fourth Amendment rights are personal rights which, like some other constitutional rights, may not be vicariously asserted.' [Citations.] A person who is aggrieved by an illegal search and seizure only through the introduction of damaging evidence secured by a search of a third person's premises or property has

not had any of his Fourth Amendment rights infringed. [Citation.] And since the exclusionary rule is an attempt to effectuate the guarantees of the Fourth Amendment [citation], it is proper to permit only defendants whose Fourth Amendment rights have been violated to benefit from the rule's protections. [Citation.]" (*Rakas v. Illinois* (1978) 439 U.S. 128, 133-134, fn. omitted [58 L.Ed.2d 387, 394-395].) Pointing out the "substantial social cost" of applying the exclusionary rule to keep relevant and reliable evidence from the trier of fact, and to deflect "the search for truth at trial," the Supreme Court noted the importance of limiting the class of persons who may invoke the rule. (*Id.* at pp. 137, 138 [58 L.Ed.2d at p. 397].)

Courts used to refer to this question as "standing" to raise a Fourth Amendment violation. However, since *Rakas v. Illinois, supra,* 439 U.S. 128 [58 L.Ed.2d 387]), "the United States Supreme Court has largely abandoned use of the word 'standing" in its Fourth Amendment analyses." (*People v. Ayala* (2000) 23 Cal.4th 225, 254, fn. 3.) "[T]he better analysis forthrightly focuses on the extent of a particular defendant's rights under the Fourth Amendment, rather than on any theoretically separate, but invariably intertwined concept of standing." (*Rakas v. Illinois, supra,* 439 U.S. at p. 139 [58 L.Ed.2d at p. 398].)

Thus, the issue is whether the defendant "is asserting his own legal rights and interests rather than basing his claim for relief upon the rights of third parties." (*Rakas v. Illinois, supra,* 439 U.S. at p. 139 [58 L.Ed.2d at p. 398].) Stated another way, "the question is whether the challenged search or seizure

violated the Fourth Amendment rights of a criminal defendant who seeks to exclude the evidence obtained during it. That inquiry in turn requires a determination of whether the disputed search and seizure has infringed an interest of the defendant which the Fourth Amendment was designed to protect." (*Id.* at p. 140 [58 L.Ed.2d at p. 399].)

There is a split of authority as to whether a passenger can challenge the legality of a traffic stop of the car.

One line of cases holds that a traffic stop constitutes a detention, or seizure, of not only the driver, but of passengers as well. (E.g., *People v. Bell* (1996) 43 Cal.App.4th 754, 765; *People v. Grant* (1990) 217 Cal.App.3d 1451, 1460; *U.S. v. Twilley* (9th Cir. 2000) 222 F.3d 1092, 1095; *U.S. v. Kimball* (1st Cir. 1994) 25 F.3d 1, 5; *U.S. v. Eylicio-Montoya* (10th Cir. 1995) 70 F.3d 1158, 1164; *U.S. v. Roberson* (5th Cir. 1993) 6 F.3d 1088, 1091.) The rationale of this majority view (see *People v. Bell, supra,* 43 Cal.App.4th at pp. 761-765) is that everyone in the vehicle is detained because the traffic stop "'significantly curtails the "freedom of action" of the driver and the passengers . . . .'" (*Id.* at p. 761, quoting *Berkemer v. McCarty* (1984) 468 U.S. 420, 436 [82 L.Ed.2d 317, 332]; see also *People v. Grant, supra,* 217 Cal.App.3d at p. 1458 [a passenger's "personal liberty and freedom of travel are intruded upon by" the stop]); *U.S. v. Twilley, supra,* 222 F.3d at p. 1095 [a "passenger's interests are affected when [the] vehicle is stopped"]; *U.S. v. Kimball, supra,* 25 F.3d at p. 5 ["a stop affects an occupant's interest in freedom from random, unauthorized, investigatory seizures"].)

Other decisions hold that a routine traffic stop does not subject a passenger to a seizure within the meaning of the Fourth Amendment. (E.g., *People v. Castellon* (1999) 76 Cal.App.4th 1369, 1373-1374; *People v. Cartwright* (1999) 72 Cal.App.4th 1362, 1367-1369; *People v. Fisher* (1995) 38 Cal.App.4th 338, 343-344.) The rationale of this minority view is that the traffic stop is intended to restrain the freedom of movement of only the driver; the passenger, whose presence in the car "is merely fortuitous," does not submit to the show of authority and, without more, is free to leave after the vehicle stops. (*People v. Cartwright, supra,* 72 Cal.App.4th at pp. 1367-1368; see also *People v. Castellon, supra,* 76 Cal.App.4th at p. 1374; *People v. Fisher, supra,* 38 Cal.App.4th at pp. 343-344.)

In our view, a common sense application of Fourth Amendment principles leads to the conclusion that a traffic stop constitutes at least a momentary seizure of everyone in the car. Certainly, it must be said that the freedom of action of the passenger, as well as the driver, is significantly curtailed by an officer's act of making the driver stop the car. (See *California v. Hodari D.* (1991) 499 U.S. 621, 625-626 [113 L.Ed.2d 690, 697] [a "seizure" within the meaning of the Fourth Amendment occurs when a person yields to an officer's use of physical force, or show of authority, and the person's liberty is actually restrained in some way].) Whether a passenger remains detained thereafter depends on whether, under the circumstances, a reasonable person would feel free to leave while the officer deals with the driver. (*United States v. Drayton* (2002) 536 U.S. __, __ [153 L.Ed.2d 242, 251].) But the

fact remains that, at the time of the initial traffic stop, the passenger is seized within the meaning of the Fourth Amendment. (See *California v. Hodari D., supra,* 499 U.S. at pp. 625-626 [113 L.Ed.2d at p. 697].) By no stretch of the imagination can it be said that the passenger is free to go from the point at which the driver yields to the officer's show of authority and the time that the seizure occurs when the car actually stops.

Consequently, although a passenger who asserts no property or possessory interest in the car "would not normally have a legitimate expectation of privacy" in the vehicle in order to contest its seizure and search (*Rakas v. Illinois, supra,* 439 U.S. at pp. 148-149 [58 L.Ed.2d at p. 404]), the passenger can challenge the legality of the traffic stop because the passenger is asserting his or her own legal right to be free from an unlawful seizure. (See *Berkemer v. McCarty, supra,* 468 U.S. at p. 436 [82 L.Ed.2d at p. 332]; *Colorado v. Bannister* (1980) 449 U.S. 1, 4, fn. 3 [66 L.Ed.2d 1, 4]; *Delaware v. Prouse* (1979) 440 U.S. 648, 653 [59 L.Ed.2d 660, 667].)

So it is in this case. As a passenger in the car stopped by Deputy Sheriff Brokenbrough, defendant can challenge the legality of the stop.

According to defendant, the stop was unlawful because "there were no facts to support [a reasonable] suspicion the Vehicle Code was being violated." We agree.

"An investigatory stop must be justified by some objective manifestation that the person stopped is, or is about to be, engaged in criminal activity." (*United States v. Cortez* (1981)

449 U.S. 411, 417, fn. omitted [66 L.Ed.2d 621, 628]; *People v. Souza* (1994) 9 Cal.4th 224, 231.) In other words, the officer "must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, [objectively] warrant [a reasonable suspicion that the suspect is, or is about to be, engaged in a crime]." (*Terry v. Ohio* (1968) 392 U.S. 1, 21 [20 L.Ed.2d 889, 906].) Such facts may include a "consideration of the modes or patterns of operation of certain kinds of lawbreakers." (*United States v. Cortez, supra,* 449 U.S. at p. 418 [66 L.Ed.2d at p. 629].) "The corollary to this rule, of course, is that an investigative stop or detention predicated on mere curiosity, rumor, or hunch is unlawful, even though the officer may be acting in complete good faith." (*People v. Loewen* (1983) 35 Cal.3d 117, 123.)

Here, the only basis for the traffic stop was Deputy Sheriff Brokenbrough's belief that the Buick's driver might be operating the car in violation of Vehicle Code section 4000, which provides in pertinent part that no person shall drive upon a highway, including a public street, any motor vehicle "unless it is registered and the appropriate fees have been paid . . . ." But the facts known to the officer did not warrant a reasonable suspicion of such criminal activity. Before stopping the vehicle on November 27, Brokenbrough ran a check on the registration and was informed that it had expired but that an application was in process to renew the registration. Also before stopping the vehicle, he observed that a temporary operating permit with the number 11, representing the month of November, was in the back window. Although the temporary permit

was good until the end of November and authorized defendant to drive the Buick on a public street (Veh. Code, § 4606), Brokenbrough knew from past law enforcement experience that some drivers "remove [temporary permits] and switch them around on vehicles" in order to avoid fines for expired registrations. However, he did not see anything unusual about the way the temporary permit was affixed to the Buick which would lead to the conclusion that it did not belong on the car. Indeed, he knew a registration renewal was in process for the Buick, which indicated the temporary permit was issued for it. Nevertheless, Brokenbrough stopped the Buick to verify whether the temporary permit was issued for that vehicle.

Because Deputy Sheriff Brokenbrough had at most a hunch that the driver of the Buick was operating an unregistered vehicle in violation of Vehicle Code section 4000, he acted unreasonably and unlawfully in stopping the vehicle for the purpose of determining whether the temporary operating permit belonged to the Buick. (Cf. *People v. Butler* (1988) 202 Cal.App.3d 602, 606-607 [an officer may not stop a vehicle simply for the purpose of determining whether its windows "were made of illegally tinted, rather than legally tinted, safety glass"; unless the officer is aware of articulable facts that suggest the tinting is illegal, "the detention rests upon the type of speculation which may not properly support an investigative stop"].)

But for the unlawful vehicle stop, Deputy Sheriff Brokenbrough would not have discovered and seized the evidence against defendant. Consequently, the trial court erred in not suppressing the evidence "under the 'fruit of the poisonous tree' doctrine." (*U.S. v.*

Kimball, supra, 25 F.3d at p. 6, citing *Wong Sun v. United States* (1963) 371 U.S. 471, 484-485 [9 L.Ed.2d 441, 453-454]; *People v. Butler, supra,* 202 Cal.App.3d at p. 607.)

DISPOSITION

The judgment is reversed.

SCOTLAND, P.J.

We concur:

BLEASE, J.

ROBIE, J.

APPENDIX D

FRIDAY, FEBRUARY 8, 2002

--oOo--

In the matter of the People of the State of California versus Bruce Edward Brendlin, Defendant, Case Number CRF-01-2703, came on regularly before the Honorable Ann Rutherford, Judge of the Superior and Municipal Court, for the County of Sutter, State of California, sitting in Department Two.

The People were represented by Susan Green, Deputy District Attorney.

The Defendant, Bruce Edward Brendlin, was personally present and represented by Timothy Warriner, Deputy Public Defender, acting as his counsel.

The following proceedings were then had:

---oOo---

THE COURT: The Court at this time is calling CRF-01-2703; and that is the matter of People versus Simeroth and Brendlin.

Mr. Brendlin, that is Bruce Edward Brendlin, is present with his counsel, Tim Warriner. Karen Sue Simeroth is present with her attorney, Mr. Hansen. And Ms. Green is appearing for the People.

Looks like -- I got this file transferred over to me at the lunch break, and I had the opportunity to take it with me and read the motion at lunch. We have a motion to supress and the People's motion to continue the jury trial which is set for the 13th. What I have is I have Mr. Warriner for Mr. Brendlin with a motion to supress.

I don't have a motion to supress from Mr. Hansen on behalf of Ms. Simeroth; is that correct?

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MR. HANSEN: It is my intention to move to join in.

THE COURT: To join in. Okay.

Do you want to take up the motion to continue first?

MS. GREEN: No.

THE COURT: You want to take up the motion to supress first?

MS. GREEN: Yes; although, I do have an objection to his joining, because the People haven't been given notice.

If we get to the point where we're going to litigate the traffic stop, I don't have a problem with him joining at that time. It's my understanding that's all he's joining on.

I'm not objecting to the cavity search of Ms. Simeroth; but my objection stands until and unless we get to the point where we litigate the traffic stop.

THE COURT: Okay. Is what you're interested in the traffic stop?

MR. HANSEN: Yes.

THE COURT: Number one, can we all stipulate that there was no search warrant?

MS. GREEN: There was no search warrant.

THE COURT: So we can stipulate to that?

MS. GREEN: Yes.

THE COURT: We don't have to put on evidence there was no search warrant?

MS. GREEN: Yes. There was an arrest warrant --

THE COURT: I understand that.

MS. GREEN: Okay.

THE COURT: At least I expect I will understand that, let's put that it way.

Next on the list we have an objection to standing on behalf of your client, Mr. Warriner. You have a list of items you want supressed. And the People require that you put on some evidence of your right of privacy and are interested in the items.

MR. WARRINER: I think there's no search warrant. I think it's the People's burden at this point to justify the search where there is no warrant. So I think that is the People's burden.

And if the Court -- in terms of standing, one, we have one defendant who's joined in on the standing issue, so I think it becomes a moot point at this point.

In any event, there are cases that support I do have standing. None of these cases are Third District cases; I checked all of them. There's no case from the Third District that says that I have standing. There's no case from the Third District that says I don't have standing. People versus Bell says I have standing. People versus Grant says I have standing, and People versus Lineburger, the Nineth Circuit, concludes I have standing.

THE COURT: You don't want to rely on the Nineth Circuit.

MR. WARRINER: Well, we won't talk about that too much. Well, the one that counts says I do have standing. Ms. Green, she found Cartwright.

THE COURT: How do you supress something you have no interest in?

MR. WARRINER: Well, People versus Bell and Grant and Lineburger say that the passenger in a vehicle, when there's a traffic stop made that is not supported by probable cause, they

say that the passenger has sufficient interest to move to supress the evidence.

THE COURT: Supress the stop?

MR. WARRINER: Yes.

THE COURT: Which case are you relying on?

MR. WARRINER: People versus Bell, People versus Grant --

THE COURT: Which page are you on?

MR. WARRINER: This is on the People's response. The People point this out on Page 4 and 5, that Cartwright supports that standing is not always a sure thing when it comes to another passenger. But the People agree that there are other California cases, People versus Bell, Grant and Lineburger that definitely say passengers do have standing.

THE COURT: Only if they're detained.

MR. WARRINER: No; Bell, Grant and Lineburger say passengers have standing if there is a traffic stop without sufficient probable cause.

THE COURT: Ms. Green.

MS. GREEN: He's talking about two different issues. Those cases which he's referring to are talking about the stop. And what the most recent California case says is, a passenger in a car -- which relies on a United States Supreme Court case --

THE COURT: There's a very recent case as I recall.

MS. GREEN: Right. -- is not detained. And that's an issue, about do we have search issues. Nothing was found on his person. So the issue about whether or not he was detained from the stop is different as to whether or not he has standing to suppress anything found in the car, because nothing was found on

him. He doesn't have, the People's position, any standing to supress the lab that was found in the car because he's a passenger.

Also, because he's a passenger, he can't claim he was detained until the officers exerted some force to, you know -- actually, in this case, ordering him out at gunpoint. At that point it wasn't a detention; it was an arrest from the time that they contact him.

MR. WARRINER: I think that Ms. Green is confusing the issues. People versus Bell, Grant and Lineburger say when a passenger in a vehicle is pulled over and there's no probable cause, that person is seized, their body is being seized by the police, okay. And those cases say that a passenger --

THE COURT: I think there are cases that say he can get out --

MR. WARRINER: Well --

THE COURT: He can walk away. The door was open; he could have walked.

MR. WARRINER: Well --

THE COURT: Until the officer said "Stop," he wasn't seized.

MR. WARRINER: He didn't have any choice.

THE COURT: Of course he did; he could have walked away.

MR. WARRINER: Well, Your Honor, Bell, Grant and Lineburger don't hold that way.

THE COURT: Anyway --

MR. WARRINER: Cartwright --

THE COURT: The other problem that I'm trying to get to, you're trying to supress these items that are listed on your

motion --

MR. WARRINER: Uh-huh.

THE COURT: -- but I don't know what interest you have in them.

MR. WARRINER: I am objecting -- my objection is that this should not have been a stopped vehicle in the first place, because there was no probable cause. So whatever was found after that is the fruit of the poisonous tree.

THE COURT: I must be missing something. I think you have to put on evidence that you have an interest in the things you wish to supress, as to your client.

MR. WARRINER: He has -- my client has an interest in not being seized, not being pulled over by the police.

THE COURT: That's to supress his arrest.

MR. WARRINER: No, that's to supress the traffic stop of the vehicle. If there was no stop, there can't be any arrest, there can't be any evidence, because the vehicle would have gone on about its business. So I think everything hinges on the validity this traffic stop.

THE COURT: Do you want to go ahead and let him get to the traffic stop and see where it goes from there?

MS. GREEN: First I would like a ruling that his client was not detained as a result of the traffic stop because he was a passenger.

THE COURT: I'd have to hear some evidence to know he wasn't detained. As I understand it, I don't think he was detained until the officer pulled the gun and also said, "You're under arrest, I abscond you."

MS. GREEN: I'm not going to -- with him before I'm required to put on any evidence.

MR. WARRINER: She just stipulated, and I'll ask the Court to take judicial notice --

THE COURT: She stipulated there was no search warrant. She did not stipulate there was no arrest warrant.

MR. WARRINER: I obviously want to put on evidence. I think it's the prosecutor's burden to put on evidence. But the Court understands where I'm coming from, and we have a slightly different take on it.

THE COURT: I'll just tell the People to call their first witness.

MS. GREEN: Okay.

THE COURT: We'll determine when he got seized.

MS. GREEN: And my objection --

THE COURT: I'm going to hold your objection, pending to ruling.

MS. GREEN: Thank you.

THE COURT: I'll listen to the testimony and I'll make a finding as to if he was seized if ever and as to what --

MS. GREEN: Okay. We would call Deputy Brokenbrough.

THE COURT: Thank you, Ms. Green.

OFFICER ROBERT BROKENBROUGH,

a witness called by the People, after having been first duly sworn to tell the truth, the whole truth and nothing but the truth, testified on his oath as follows:

DIRECT EXAMINATION

BY MS. GREEN:

Q. Would you state your full name and spell your last name for the record.
A. Robert Charles Brokenbrough, B-R-O-K-E-N-B-R-O-U-G-H.
Q. What is your occupation, sir?
A. Deputy sheriff.
Q. For Sutter County?
A. Correct.
Q. Were you working on November 27th of 2001?
A. Yes, I was.
Q. Do you recall where you were at approximately 1:40 a.m.?
A. Yes.
Q. Where were you?
A. Would have been on Franklin, right around south Barrette.
Q. Okay. Were you traveling with anybody -- or were you in a patrol car?
A. Yes, I was.
Q. Was anyone else with you?
A. Yes.
Q. Who was with you?
A. That would have been Cadet Janessa Taber.
Q. And at some point around that time was your attention drawn to a 1993 brown Buick Regal?
A. Yes, it was.
Q. Would you tell me about that, please?
A. Yes. The vehicle was also traveling in front of me. It was eastbound on Franklin. I saw that the registration had expired as of November; and in addition, there was also a temporary DMV sticker in the window.

Q. When you said that the registration had expired, what exactly were you looking at on the vehicle to come to that conclusion?
A. The tab on and the year on the license plate itself.
Q. There was a month tab?
A. Yes.
Q. Do you recall what year the month was for?
A. Nine.
Q. Would that relate to the month of September?
A. Yes.
Q. Was there a year on the vehicle?
A. Yes.
Q. What year tab was there?
A. It was red and it was 01.
Q. Okay; and that would relate to 2001?
A. Correct.
Q. Then you had indicated that you saw something in the window?
A. Yes.
Q. What did you see in the window?
A. A paper, a red-colored temporary sticker in the window.
Q. Okay. Are you familiar with the item you saw in the window?
A. Yes.
Q. And what did you think it was?
A. I'm sorry; can you --
Q. Did you know what the item was or did you think it was something?
A. Yes; it's a temporary sticker from DMV.
Q. And was there a number reflected on that sticker?

A. Yes, there was.
Q. And what was it?
A. 11, for November.
Q. Does that correspond to a particular month?
A. Yes.
Q. Was that November?
A. Yes.
Q. What did you do after observing these two things on the vehicle?
A. Made a traffic stop on the vehicle for the vehicle being expired.
Q. When you made the traffic stop did the vehicle stop?
A. Yes.
Q. Did you get out of your car?
A. Yes.
Q. Did you approach the vehicle?
A. Yes.
Q. What side did you approach?
A. On the driver's side.
Q. Did you contact the driver?
A. I did.
Q. Who was the driver?
A. A female, Karen Simeroth.
Q Do you see that person in the courtroom today?
A. I do.
Q. Would you please point her out and describe what she's wearing and where she is sitting.
A. She's sitting in the jury box, left of her attorney, wearing

the orange sweater and striped pants.

THE COURT: The record will reflect Ms. Simeroth has been identified.

MS. GREEN: Thank you, Your Honor.

Q. Did you notice whether or not there was anyone else in the vehicle besides Ms. Simeroth?

A. Yes.

Q. Was there another person?

A. Yes.

Q. How many others?

A. One other person.

Q. Where was that person?

A. Sitting in the passenger seat.

Q. Did you recognize that person?

A. Yes.

Q. Okay. How did you recognize him?

A. I knew that it was either Scott or Bruce Brendlin from prior arrests or contact that I've had.

Q. Okay. When you spoke with Ms. Simeroth, did you ask her for any type of identification?

A. I did.

Q. What did you ask for?

A. I asked for her driver's license.

Q. Did she provide that to you?

A. Yes, she did.

Q. While you were speaking with Ms. Simeroth, did you have a conversation with the front passenger?

A. Yes.

Q. What did you talk to him about?
A. I asked the passenger to identify himself, and he verbally identified himself as Bruce Brown.
Q. Did he provide you with any type of ID?
A. No.
Q. Do you see the person, this passenger, here today?
A. Yes.
Q. Would you please point him out, describe what he's wearing and where he's sitting?
A. Sitting at the defense table next to his attorney, wearing the orange sweater and striped pants.
THE COURT: The record will reflect Mr. Brendlin has been identified.
MS. GREEN: Thank you.
Q. After you had received Ms. Simeroth's driver's license, what did you do?
A. I put Bruce Brendlin's name over the radio, and I was aware that one of the Brendlin brothers was a parolee at large. Ultimately Officer Baker of the Yuba City Police Department responded back that he believed Brendlin was a parolee at large and was absconding.
Q. And did your dispatch do anything in relation to the name Bruce Brendlin?
A. Yes; I contacted my dispatch and gave them the name Bruce Brendlin, had them check, and immediately they confirmed that Bruce Brendlin was a parolee at large.
Q. Did you also have dispatch check anything with Simeroth?
A. Yes.

Q. What did you have them do with regard to her?
A. Had them check to see if she had a valid license as well as any warrants.
Q. Now, how soon after you contacted Ms. Simeroth in the driver seat did you call to have them check on a warrant for Mr. Brendlin or --
A. Would have been one to two minutes.
Q. Okay. How long after you called dispatch with this request did Brian Baker, the Yuba City police officer, call you back on the radio?
A. As soon as he heard me identify the passenger, he immediately responded that Bruce Brendlin was a parolee at large.
Q. And how long did it take for dispatch to confirm the warrants for you?
A. I would say right around a minute.
Q. During the time that you were waiting for the warrant to be confirmed, did you observe anything with respect to the car doors?
A. Yes.
Q. What did you observe?
A The passenger door opened and then immediately shut.
Q. Was this a two-door car?
A. Yes.
Q. Okay. After you received confirmation from dispatch that there was a warrant for Mr. Brendlin, what did you do?
A. Prior to that -- I requested back up at that point, and Deputy Ramos arrived, and Bruce Brendlin was taken into custody at gunpoint.

Q. Describe for me what you did exactly, please?
A. Withdrew my duty weapon, stood by the passenger door of my patrol car, pointed it in the direction of Bruce Brendlin, and verbally ordered him out of the car at gunpoint.
Q. And was that the first time you issued a command to him during the entire traffic stop?
A. Yes.
Q. Okay. Did you have any other conversation with him prior to that other than asking him what his name was?
A. No.
MS. GREEN: Your Honor, did you want me to just proceed through the rest of the hearing?
THE COURT: I guess so.
MS. GREEN: Okay.
THE COURT: Because to rule on one specific issue as we went, I'd have to do cross-examination.
MS. GREEN: Okay.
Q. You order him out of the car at gunpoint. Where does he -- where do you take him after that?
A. I immediately arrest him and place him in the back seat of the patrol car.
Q. Okay. After you place Mr. Brendlin in the back of the patrol car, what do you do?
A. Do a search incident to the arrest on Mr. Brendlin.
Q. Okay. You searched his person?
A. Yes.
Q. Did you find anything on his person?
A. Yes.

Q. What did you find?
A. Located an orange syringe cap.
Q. I want to jump back in time for a second.
During the time you were speaking with Ms. Simeroth at the driver side door, did you notice anything in the car that -- inside the car that peaked your interest?
A. Yes.
Q. What was that?
A. There was one or two containers of Brayclean (phonetic) cleaner.
Q. And why was that of interest to you?
A. If anything, it just perked my interest because that is something that I understand is used for manufacturing.
Q. Okay. And are you familiar -- you said you were familiar with the Brendlin brothers through prior contacts?
A. Yes.
Q. Were you familiar in particular with Bruce Brendlin's criminal history?
A. I don't know, to be honest with you. I've arrested both of them before. I know that both of them have been associated with either weapons or narcotics.
Q. Okay. After arresting and putting Mr. Brendlin in the back of the patrol car, do you recontact the driver?
A. Yes.
Q. Is she still sitting in the car at this time?
A. Yes.
Q. When you recontact her, do you ask her to get out of the vehicle?

A. Yes.
Q. Okay. What happens next?
A. She exited the vehicle, and I asked her to walk to the front of my patrol car, which she does.
Q. Okay. When you get to the front of your patrol car, what do you do?
A. As I started talking to her, she begins to place her hands in and out of her coat pockets; she's wearing a black bulky jacket.
Q. And do you say anything to her about that?
A. Yes.
Q. What do you say?
A. I asked her if she had any weapons inside her pockets.
Q. And what does she say?
A. "No."
Q. Does she continue -- well, do you direct her to do anything with her hands?
A. Yes, I believe I told her to keep her hands out of her pockets, at which time the hands went back inside the pockets of the jacket.
Q. Now, at the point you're having this conversation with her, who else is on the scene?
A. It would have been Deputy Ramos, Officer Baker and Officer Hansen and Cadet Taber as well as Deputy Emerson.
Q. Deputy Emerson is another Sutter County deputy?
A. Correct.
Q. After you tell her to keep her hands out of her pockets, and she puts her hands back in, what happens next?

A. I asked her again if she had any weapons in her pockets and she replied, "No."
Q. Then what happened?
A. I then proceed to do a pat down search for officer safety.
Q. Describe for me how you began your pat down?
A. I asked Ms. Simeroth to place her hands on top of her head, at which time I grabbed her hands with my left hand and began to do a pat down search with my hand.
Q. What is she doing during the time you're in a pat down search with your hand?
A. Initially she's standing there. As the pat down search progressed, she's moving to the right, away from me.
Q. Okay. Are you directing her to do anything when she's moving to the right?
A. Yes; she was told to stand there.
Q. Did she do that?
A. No.
Q. What did she do?
A. She continues to move to the right to avoid being searched.
Q. Okay. At some point during the time that you're patting her down, does Deputy Emerson direct your attention to something?
A. Yes.
Q. What does he direct your attention to?
A. Deputy Emerson told me from his location he could see something in her waistband.
Q. Okay. Do you attempt to do anything in response to that information?
A. Yes.

Q. What do you do?
A. I proceeded to run my fingertips along her waistband, at which time I felt some type of a bulky object inside of her waistband of her sweatpants.
Q. Okay. What is she doing at the time that you feel something in the waistband of her pants?
A. Still resisting.
Q. How is she resisting?
A. Moving to the side, moving to the right.
Q. Okay. Are you able to retrieve what's in the waistband of her pants?
A. Yes.
Q. How do you do that?
A. She is actually restrained by Deputy Ramos, and ultimately Cadet Taber retrieved the item from her waistband.
Q. Cadet Taber is a female?
A. Correct.
Q. Did you look at the items that were retrieved from her waistband?
A. Yes.
Q. What do you find?
A. Two syringes, one did not have a syringe cap on it, and a plastic baggy containing a green leafy substance.
Q. What do you do at that point?
A. Retrieve those items, and secure her, and place her in handcuffs.
Q. Okay. After arresting her, does she go in one of the patrol cars?

A. Yes.
Q. Okay. Did you search the vehicle?
A. Yes.
Q. Okay. What do you find in the vehicle?
A. There was -- I believe it was either a green- or blue-colored Rubbermaid container. I searched that. Inside that container there was tubing, a scale, and other items. In addition, there was a Nine Lives cat -- either a cat litter container -- it was a plastic container, and inside that was a liquid. And that container was completely sealed with gray duct tape.
Q. The Rubbermaid container that had the scale and the glassware, where was that located in the vehicle?
A. It was on the seat directly between the driver and passenger of the vehicle.
Q. What about the Nine Lives plastic container?
A. Same thing, it was on the seat.
Q. In the Rubbermaid container did you find any tin foil?
A. Yes.
Q. Did you find any filter papers?
A. Yes.
Q. Now, after seeing what was in the Rubbermaid container and the solution in the Nine Lives container, did you request the assistance of somebody?
A. Yes.
Q. And who was that?
A. I requested Net 5 be called out, and ultimately they responded.

Q. Okay. Who's Net 5?
A. It's the Yuba-Sutter local narcotics enforcement.
Q. Okay. So something in this Rubbermaid container and the Nine Lives container led you to believe this was possibly narcotics?
A. Correct.
Q. Did you also search a purse that you located in the vehicle?
A. Yes.
Q. Where was that purse located?
A. The purse was located on the front passenger seat.
Q. And what did you find in the purse?
A. Hypodermic syringe.
Q. Was there any identification in the purse?
A. Yes.
Q. And who was it for?
A. Simeroth.
Q. Prior to the time that you arrested Ms. Simeroth, had you asked her to search the vehicle?
A. Yes.
Q. Okay. And what did she say when you asked her to search the vehicle?
A. I believe I asked her if there was anything illegal inside the vehicle, and she said no, however, she had not been driving it most of the day.
Q. Did she ever answer you yes or no with regard to your question to search?
A. I don't think she did.
Q. At some point did you call dispatch and request that the

registration be run?
A. Yes.
Q. And what information did you receive with regard to that?
A. Dispatch advised that the vehicle was expired as of September 27, '01, with an application in process.
Q. Sometime later did you -- I'm sorry -- strike that.
Deputy Ramos, did he transport Ms. Simeroth to the jail for you?
A. Yes.
Q. Sometime after she was transported to the jail did he provide you with something?
A. Yes.
Q. What did he provide you with?
A. He provided me with a large plastic baggy; and inside this bag was another plastic baggy containing a white powdery substance and another plastic baggy containing a green leafy substance.

MS. GREEN: No further questions.

MR. WARRINER: Okay.

CROSS-EXAMINATION

BY MR. WARRINER:

Q. When you first saw this vehicle you were traveling in your patrol vehicle?
A. Yes.
Q. And you had a cadet with you; is that right?
A. Yes, correct.
Q. You were in a marked patrol vehicle?
A. Yes.

Q. And this had rack lights on the top?
A. Yes.
Q. Okay. And then you basically -- you followed the vehicle that Simeroth and Brendlin were in for some period; is that right?
A. Yes.
Q. Okay. Because you made some observations about the registration tags?
A. Yes.
Q. And you were making those observation as you were following the vehicle?
A. Yes.
Q. And one of the observations you made is that the small tag that's affixed to the license plate was expired?
Is that what you're saying --
A. Yes.
Q. -- that that registration tag was expired?
A. Yes.
Q. Now, you referred to a DMV temporary sticker that you saw, do you recall that?
A. Yes.
Q. Okay. And what that is is a DMV temporary registration sticker; is that true?
A. I refer to it as a DMV sticker.
Q. You don't like to use the word "registration" with that sticker?
A. I'm sure it's probably called that, but I refer to it as a DMV sticker.

MR. WARRINER: Can I approach, Your Honor?

THE COURT: You may.

MR. WARRINER: I'd like to have this marked. I think this is consistent with what is in the Court's packet.

THE COURT: It's actually called a temporary operating permit.

MR. WARRINER: Temporary operating permit, okay.

(Defense Exhibit A was marked for identification.)

BY MR. WARRINER: Q. Okay, Officer, I'm showing you Defense Exhibit A, and I want you to look at that. Do you recognize that?

A. I recognize the temporary sticker and the 11 on it, that's it.

Q. Okay. Is what's depicted in that exhibit that you're looking at, is that consistent with what you observed on the 27th of November, 2001?

A. I would say so. The writing and the date at the bottom, that's unknown.

Q. Okay. And you have seen those stickers before?

THE COURT: May I see that?

THE WITNESS: Yes, Your Honor.

(Pause.)

THE WITNESS: Yes, I have.

BY MR. WARRINER: Q. And -- okay. And you don't use the word "registration"; but basically that sticker has something to do with allowing the vehicle to operate on the roadways and highways of the state, is that true --

A. Yes.

Q. -- when that sticker is given to you?

MS. GREEN: Objection; calls for a legal conclusion.

THE COURT: Sustained.

MR. WARRINER: Okay.

Q. Do you know what that sticker means?

A. My understanding is that when a vehicle is expired, a person can go in to DMV and obtain that sticker, but there is still is other items that need to be taken care of before that vehicle can drive.

Q. So you're saying even if you have that sticker you can't drive?

A. That's my understanding.

Q. Okay. So it is your practice if you saw any car with a sticker like that in the exhibit I've just shown you, and an expired tab on their license plate, you feel that you would be able to pull them over?

A. I believe I would have to verify whether or not that sticker belonged to that vehicle.

Q. Okay. So just looking at the sticker, you're saying that's not good enough, you would actually have to pull them over and conduct a verification?

A. Correct. Based on my experience, over 11 years, with the sticker, its not being a fixed object -- it's paper -- it's tape --

Q. Uh-huh.

A. -- people are -- have been known to remove it to avoid paying penalty fees.

Q. Okay. And so you've seen cases of these removed stickers?

A. Yes.
Q. Have you seen cases of removed stickers such as that sticker shown in the exhibit I've shown you?
A. I'm sorry?
Q. In other words, these temporary stickers. When we're talking about cases of removing stickers, are you talking about these temporary stickers?
A. Yes. People have removed stickers to avoid paying penalties, yes.
Q. What about the little sticker, the license plate tab, do people remove those and switch them around on vehicles?
A. They do.
Q. There's no difference between that little sticker and this temporary sticker in the Defense exhibit I've shown you; is that right?
A. If I understand your question correctly, people will put false tabs on license plates.
Q. Right.
A. They will put false temporary stickers in a window, okay.
Q. Right.
A. Whether it's the case in this case, I don't know.
Q. And when you were traveling down the road, and when you were traveling behind the vehicle that Brendlin and Simeroth were in, you didn't know if in fact that temporary sticker was a false sticker?
A. That's correct.
Q. And did you -- I mean, there was nothing about the sticker, the way it was affixed in the vehicle that made you suspect that

it was wrongfully placed in the vehicle? Was there anything unusual about the sticker, the way it was placed on the vehicle?

A. No.

Q. Okay. You didn't see it peeled away or if it was put up sort of haphazardly?

A. It's also 1:30 in the morning or so, so, yes.

Q. Okay. So 1:30, at that time, that has significance for you?

A. It's dark outside; so therefore, it was unlike daylight, where your advantage of seeing the sticker would be a lot better.

Q. Okay. Yeah, right.

Given the conditions at 1:30 in the morning, it wasn't that light, you didn't see anything to make you think that sticker shouldn't have been on the vehicle?

A. Correct.

Q. All right. And then you were traveling down the road, and you're observing the sticker, and there's some point where you put on your rack lights; is that right?

A. My overheads, yes.

Q. Overhead lights?

A. Yes.

Q. And do you put on a siren, too?

A. No.

Q. Okay. You put on your overhead lights and that's when you effect this traffic stop with the vehicle?

A. Yes.

Q. This is just on a street here in town; is that right?

A. Yes.

Q. Okay. And do you pull up behind the vehicle or on the side

of the vehicle?
A. Behind the vehicle.
Q. And when you pull up behind the vehicle you still leave your lights on; is that correct?
A. Correct.
Q. And do you -- at that point do you run the license plate -- do you radio that license plate in to dispatch so they could do a check on the license plate?
A. No.
Q. Did you do anything like that immediately when you stopped the vehicle?
A. Yes. The plate was ran, yes.
Q. So that's pretty much standard operating procedure, right, if you stop somebody you're going to radio in their license plate to dispatch so you have this check going on them?
A. Yes.
Q. And you did that?
A. Yes.
Q. That takes a few seconds. How long does it take, what do you?
A. Depends on how busy dispatch is.
Q. Sure. Do you recall in this case what you did when you radioed that information in?
A. No.
Q. But that occurs after you stopped the vehicle, the vehicle in front of you. And then you make this radio call; is that right?
A. No.

Q. No. It happened as you were -- when did it happen?
A. An unknown time before the actual stop itself. Originally the vehicle -- I saw the vehicle at Circle K.
Q. Okay.,
A. The vehicle was parked at a pay phone. I didn't see the occupants. I ran the plates and they came back expired. At that time my partner and I did something else; and ultimately while we were traveling on Franklin Road, the vehicle was in front of us.
Q. Okay. So it sounds like you ran the plate some time ago basically?
A. Yes.
Q. This was at Circle K?
A. Yes.
Q. Was there something about the vehicle that caught your eye at Circle K?
A. The expired tags on the vehicle.
Q. Okay.
A. At that point I didn't see the temporary sticker.
Q. Okay.
THE COURT: Dispatch had already radioed you back before you ever saw the car the second time, that the registration was expired?
THE WITNESS: That is correct.
THE COURT: Okay.
BY MR. WARRINER: Q. But at the time you pulled the vehicle over, at that point you had seen that red tag; is that right?
A. Yes.
Q. When we refer again to that exhibit in front of you, and

also to your recollection, it had Number 11 on the vehicle you pulled over; is that right?

A. Yes.

Q. That 11 refers to a month?

A. Yes.

Q. Yes. That would mean for the eleventh month, November, that that vehicle could operate? Is that your understanding?

A. I don't know if there is an ending date, if there is a specific date within that month.

Q. Right; but your understanding is that the 11 means a month?

A. That's correct.

Q. And if it were -- if the month were -- if it were December, and you had a temporary sticker that had 11 on it, what would you think?

A. I'm sorry?

Q. Okay. Let's say this happened in December. Okay?

A. Okay.

Q. And if you ran upon a vehicle that had a temporary sticker with the number 11 on it --

A. Okay.

Q. -- what -- how would you treat that situation?

A. That it would be expired.

Q. Okay.

THE COURT: For the record, it reads: "This permit expires on the last day of the month indicated by the bold white number."

MR. WARRINER: All right.

Q. Then I think we got off track; but I was talking about how

you pulled over the vehicle and you put on your lights. Is that what you said, you put on your lights?

A. Yes.

Q. And you said by the time you pulled over the vehicle you had already radioed the license plate into dispatch?

A. Correct.

Q. So you already had this information in your mind?

A. Correct.

Q. So when you had pulled over the vehicle then did you immediately get out of the vehicle?

A. Well, I mean I have to put the vehicle in park; and ultimately, yes.

Q. Sure, within reason.

I'm wondering, did you radio in any other information immediately after you stopped the vehicle?

A. When the vehicle was stopped, either myself or my partner radioed the license plate, the description and the location.

Q. Okay. So that was the second time you radioed in information about this vehicle to dispatch?

A. Correct.

Q. Okay. And then it was after you did that is when you got out of your vehicle and approached the vehicle?

A. Yes.

Q. Now, the partner with you was a cadet?

A. Correct.

Q. Did the cadet stay in your vehicle or did the cadet get out of your vehicle and walk up to the Simeroth vehicle?

A. She did not.

Q. She stayed in the car?
A. She either sat in the car or she was standing by the door.
Q. All right. And when you approached the vehicle, you were parked behind the vehicle?
A. Yes.
Q. And the -- and your flashers were going -- your police lights were going?
A. Yes.
Q. Did you put on your spotlight, that powerful bright light?
A. I did.
Q. And did you use that to effect the stop -- as a way to effect the stop by putting that light on?
A. No.
Q. Okay. But after your vehicle was stopped and Simeroth's vehicle was stopped, then you applied that light; is that correct?
A. Yes.
Q. And is that light -- what was the purpose of applying that light at that time, the vehicle was already stopped?
A. Well, we're talking -- it's 1:30 in the morning, so obviously the spotlight is used so I can see the vehicle.
Q. Okay. So to illuminate this whole area?
A. Correct.
Q. All right. All right. And you were in your police uniform too; we're assuming you were?
A. Yes, with my duty belt.
Q. And you had a gun on, right?
A. Yes.

Q. Did you have your gun drawn?
A. At what point?
Q. Well, I mean we're saying this is at 1:30 in the morning, right?
A. Yes.
Q. And you're approaching the car alone; is that right?
A. Yes.
Q. Did you undo the snap on your holster?
A. No.
Q. Did you have your hand by your gun, you know, as if you were ready just in case something happened?
A. I might have had my hand by the gun.
Q. Okay.
A. I might have even placed my hand on the gun for officer safety; I never know what the driver or occupants are going to do.
Q. Okay. Right. And that's part of your training, because you're being careful when you approach a vehicle because you don't know what's going to happen?
A. Correct.
Q. As you approached the -- driver's side or passenger side?
A. Driver's side.
Q. That was Ms. Simeroth's side?
A. Yes, she was driving the vehicle.
Q. And also, when you pulled the vehicle over, did you ever get on that little speaker -- and I've had officers do that, get on their speaker and say something to you like, "Pull over," or "Stop your vehicle."

A. I didn't.
Q. When you pulled the vehicle over, did you see the occupants in the vehicle doing anything inside the vehicle?
A. No.
Q. Did you make any orders to the occupants of the vehicle, such as "Stay put, Put your hands up," or anything?
A. I did not.
Q. Did you -- did they roll down the window? Was the window rolled down?
A. I don't recall, other than when I approached the vehicle the window was down, I believe.
Q. Okay. Did either -- anyone from the passenger side or driver's side try to open the door or get out of the vehicle?
A. Yes, at one point the passenger door opened.
Q. Okay. And when was that point?
A. After the vehicle was stopped.
Q. Okay. Well, was it after you contacted Simeroth?
A. Yes.
Q. Okay. And was it after you looked and seen that Brendlin might be somebody you might have recognized?
A. Yes.
Q. All right. So then you approach the driver's side; and did you ask the driver for identification?
A. I did.
Q. And did you shine your light into the passenger -- into the compartment of the vehicle?
A. Yes.
Q. And at that point did you radio that information in to

dispatch, the driver's information?
A. NO.
Q. Did you ask for the passenger's information at that point?
A. I asked who the passenger was; he identified himself verbally. I didn't ask for any identification or a wallet or anything like that.
Q. And when you did that you were still on the driver's side of the vehicle?
A. Yes.
Q. Did you ever go to the passenger side of the vehicle and the passenger and ask any questions on that side?
A. No.
Q. No. It was all done through the driver's side?
A. Yes.
Q. Didn't you eventually go over to the passenger side because you got Mr. Brendlin at --
A. Yes, after it was confirmed he was a parolee at large, he was ordered out at gunpoint and ultimately taken into custody at that time.
Q. I asked a question about the gun. You didn't -- there was a point that you learned he apparently had a warrant; that's when you used the gun at gunpoint?
A. That's correct.
Q. You didn't bring the gun out before then?
A. Did not.
Q. Okay. After you asked Ms. Simeroth for her identification, what did you do immediately after that, do you recall?
A. Identified who the passenger was, obtained his name --

Q. Okay.
A. -- and ultimately walked back to my patrol car.
Q. Why did you walk back to your patrol car as opposed to staying there with the occupants of this vehicle?
A. To run the information that they provided.
Q. And you were going to run it in your computer that you have in your car?
A. No, our vehicle is not equipped with --
Q. I guessed so. But you were going to radio it back in to dispatch?
A. Correct.
Q. You went back, sat in your car, and you radioed this information in?
A. No, actually I stood at the rear of my patrol car or -- at the rear of -- or at the passenger door of my patrol unit, and that's when it was radioed in.
Q. And this whole time while you're doing this the red lights are going on your police vehicle?
A. Correct.
Q. And the large -- what is that called, the bright light?
THE COURT: Spotlight.
MR. WARRINER: Spotlight.
Q. That's on as well?
A. Yes.
Q. And then -- so you radioed this information in. And did you get a response back from dispatch?
A. Yes, eventually.
Q. Once you got that response what did you do?

A. I was told Brendlin was the parolee at large, and he was taken into custody.

Q. Okay. From the point where you asked Ms. Simeroth for her identification and asked Mr. Brendlin to identify himself, to the point where you learned that Mr. Brendlin had a warrant for his arrest, approximately how much time went by?

A. A couple minutes.

MR. WARRINER: All right. No further questions.

THE COURT: Mr. Hansen.

MS. GREEN: Oh, sorry.

THE COURT: He's interested in the traffic stop.

CROSS-EXAMINATION

BY MR. HANSEN:

Q. Deputy Brokenbrough, you said you saw this vehicle at Circle K?

A. Correct.

Q. What time of day was that?

A. I don't remember offhand.

Q. The same evening?

A. Yes.

Q. Hours before?

A. Yes.

THE COURT: Was it already dark when you saw it at Circle K?

THE WITNESS: Yes, it was. Yes.

BY MR. HANSEN: Q. And you saw the license -- the license plate and sticker on the license plate at that time?

A. Yes.

Q. And you did not see the red sticker with the 11 on it at

that time?
A. I did not.
Q. Where was the sticker, the red sticker with the 11 on it, placed in the car?
A. It was placed on the back windshield.
Q. Windshield?
A. The rear window of the vehicle, at the -- I want to say the driver's side, lower corner.
Q. Do you have any knowledge of what the Vehicle Code requires for placement of a sticker like that?
A. I don't.
Q. Do you know if it has to be any particular location on the car?
A. My understanding is that it has to be either on the rear window or the front windshield, visible.
Q. And it was on the rear window?
THE COURT: When you say rear window, I don't know what you mean; like the rear passenger window, rear driver window?
THE WITNESS: The back of the car, the back window of the vehicle.
THE COURT: The back?
THE WITNESS: Yes.
THE COURT: Okay. Like the rear windshield or whatever you want to call it. Okay, thank you.
BY MR. HANSEN: Q. The window in the back that goes from side to side?
A. Yes.
Q. Above the trunk?

A. Yeah.

THE COURT: So the one that doesn't open?

THE WITNESS: That's correct.

BY MR. HANSEN: Q. And that's where the sticker was?

A. Yes.

Q. Now, the license plate was also on the back of the vehicle, wasn't it?

A. Yes.

Q. So when you're looking for the first time and seeing this license and getting the information off it, why couldn't you see the red 11 sticker?

A. I don't know, other than from the way the car was positioned, the way it was parked. What caught my -- initially caught my eye was the color of the year. And with that being an expired tab, that caught my attention. At that point I ran the plate, I didn't see the sticker.

Q. Okay. The color of the year, that wasn't expired yet, was it? It wasn't a 2001 sticker?

A. It was '01, but it was also September. Since we were in November --

Q. But the year was okay?

A. Yes.

Q. But you say there was a September sticker on it?

A. Yes.

Q. So you ran that information. And it came back expired?

A. Yes.

Q. And you got some additional information besides the fact it was expired, didn't you?

A. Yes.
Q. And what was that?
A. Application in process.
Q. And was that the only thing you were told, application in process?
A. Besides the registered owner -- I don't know if I understand the question.
Q. What did the application in process mean to you?
A. To me that means that there are still other things that are needed to lawfully drive that vehicle.
Q. And it was not your understanding that the type of sticker represented by the red sticker with 11 on it gave permission to a person to drive that vehicle?
A. It very well may, but I still need to verify whether that sticker belongs to that vehicle.
Q. Who said that?
A. I don't know who said it; but with my experience, knowing that people will avoid paying, you know, registration -- they will affix the false sticker tab to avoid paying penalties, whatever the case may be.
Q. When you saw the vehicle you said there were no people around at that time?
A. I didn't see anyone.
Q. Had you seen the vehicle before that time?
A. No.
Q. Did you know Ms. Simeroth?
A. I don't think I've had any contact with her.
DEFENDANT SIMEROTH: You have.

MS. GREEN: For the record, that was Defendant Simeroth.

THE COURT: Thank you.

BY MR. HANSEN: Q. When you saw the vehicle later, could you clearly see the sticker with the 11 on it?

A. Yes.

Q. So you knew it was there at the time you were following it?

A. Yes.

Q. You said you called the information in again?

A. That would have been sometime after the fact.

Q. All right. So as you're following the vehicle, it's before you stop, but you don't call it in again?

A. Correct.

Q. You didn't call in to ask dispatch if it was a temporary license by virtue of the tag with the number 11/00 on it?

A. Correct. I went on what dispatch had told me earlier.

MR. HANSEN: I don't have any other questions.

REDIRECT EXAMINATION

BY MS. GREEN:

Q. When you ran the car at Circle K, dispatch informed you that it was expired, application pending?

A. Yes.

Q. Is there something about the information that was provided to you at that time -- did they provide you the name of the registered owner at the time you ran the car?

A. Yes.

Q. Who did they tell you was the registered owner?

A. Gail Tonner or Gail Tonner.

Q. When dispatch came back with that information did you

recognize that name?

A. Yes.

Q. How did you recognize it?

MR. WARRINER: Objection; hearsay.

THE COURT: I'll overrule it.

BY MS. GREEN: Q. Have you had some personal contact with Gail Tonner?

A. Yes.

Q. Tell me about it.

A. When I was assigned to detectives, I had investigated where she was a victim of a theft of a handgun.

Q. Okay. So when they came back with the registration information, expired, application pending, and gave you the owner's name, you were kind of like, oh, I know who that is?

A. Yes.

Q. Was it 11 years you've been a police officer?

A. Over 11 and a half.

Q. Okay. In your experience, have you known -- have you, in your experience as a police officer, known that temporary tags, the ones we're talking about in the rear window, have been stolen out of people's cars?

A. Yes.

Q. And people report them as being stolen?

A. Yes.

Q. That's also true of this tab you put on your car or license plate?

A. Yes.

Q. Have you had experience with people falsifying those rear

window stickers?
A. Yes.
Q. Like making them up?
A. Yes.
Q. Okay. Have you -- do you have any experience with people having expired -- like it matches their car but it's from like two years ago, in the window?
A. Yes.
Q. Okay. The temporary tag that's stuck in the back of the window, how are those put back in the window, do you know?
A. I'm assuming with tape.
Q. Okay. So you're familiar with registration tabs that you put on the license plate?
A. Yes.
Q. And those come self-sticky from the Department of Motor Vehicles when they're mailed to you?
A. Correct.
Q. That's different from the tags that you put in the back of the window?
A. When we're talking about tabs, tabs have some type of adhesive that sticks to the plate; therefore, when those are removed, whatever the case may be, there's usually some type of evidence.
Q. They're also pretty sticky aren't they?
A. Yes.
Q. Hard to get off?
A. Yes.
Q. Do you have that photograph in front of you there? If I

could see that.

(Pause.)

BY MS. GREEN: Q. Showing you Defense Exhibit A, there's some writing on this, I'd like you to read to me what's written on that tag, starting with "fees."

A. "Fees to register this vehicle or vessel have been made to the State of California, Department of Motor Vehicles. This permit must be supported by either, one, a Department receipt or -- the receipt number and the receipt number shown on this permit must agree; or 2, a letter issue used by the Department confirming the issuance thereof of a permit."

Q. In the back window -- did you see a receipt taped to the back window?

A. No.

Q. Did you see a letter from DMV taped on the back of the window?

A. No.

Q. Would those be items you could see from your patrol car when you're driving behind the vehicle?

A. Yes.

Q. You could see those items if they were taped on?

A. Yes.

Q. Would you be able to read them from your patrol car?

A. No.

Q. Okay. There's -- also taking a look at Defense Exhibit A, there's an area for license plate number; is that right? There is a blank line where you fill out this information?

A. Yes.

Q. There's also space for an engine number; is that right?
A. Yes.
Q. What's an engine number?
A. That would be the number that's stamped on the engine.
Q. Is that different from a VIN number?
A. I would assume so, but I don't know for sure.
Q. Okay. And there's also an area to write a receipt number -- a blank line; is that right?
A. Yes.
Q. Okay. So prior to the time that you stopped the car, dispatch had informed you that the tags were expired when you ran the license plate; is that right?
A. Yes.
Q. And the information that they provided, you matched the tabs that were on the vehicle; is that right?
A. Yes.
Q. Okay. And then sometime after the stop you ran the vehicle again and it again -- they told you it was expired?
A. Correct.
Q. Now, after you approached the vehicle and you saw Mr. Brendlin or someone you recognized as one of the Brendlin brothers, did that cause you some concern?
A. Yes, only because I knew one of them was a parolee at large; I didn't know which one at that point.
Q. So at the point that you saw him in the vehicle, you had some concern about "parolee at large." Was there anything in particular about -- well, you had previously said that you were familiar with them through weapons and possibly drugs?

A. Yes.
Q. Okay. During the time that you're waiting to have confirmation on the warrant, and the door opens, do you have any concerns then?
A. Yes.
Q. What are your concerns?
A. That he is either going to flee from that location from the vehicle itself --
Q. Okay. When the warrant is confirmed -- strike that.
You said you called for backup before the warrant was confirmed?
A. Yes.
Q. Why?
A. Mainly because I didn't know, number one, if this was the parolee at large; and if it was, I wanted a second unit there.
Q. Okay. So is it fair to say, then, that once you approached the car and recognized the passenger, that the issue about the license plate really became secondary?
A. Correct.
MS. GREEN: No further questions.
THE COURT: Mr. Warriner.

RECROSS-EXAMINATION

BY MR. WARRINER:
Q. I'm having another exhibit marked, which is another exhibit in the Court's -- yeah.
(Defense Exhibit B was marked for identification.)
BY MR. WARRINER: Q. I'm showing you Defense Exhibit B; do you recognize that?

A. Yes.
Q. Okay. What does that look like to you?
A. It's a photograph pertaining to the vehicle I stopped.
Q. And what do you see contained in the rear window?
A. A temporary operating permit with the number 11.
Q. And does that look like it was that night or that early morning when you stopped the vehicle on the 27th of November?
A. Yes.
Q. And -- well, let me see the picture.
And is that in the same location that it was in?
A. As long as it hasn't been moved.
Q. But it looks right to you?
A. Yes.
MS. GREEN: With "location," we're talking about the location of the sticker?
MR. WARRINER: Obviously it's not the vehicle.
MS. GREEN: I wanted to confirm for the record because that's not clear.
MR. WARRINER: Yeah.
Q. And it's true on the night and early morning when you stopped the vehicle there was nothing about the sticker that made you think that that sticker on Defense Exhibit B was stolen?
A. That's correct.
MR. WARRINER: No further questions.
THE COURT: Mr. Hansen.
MR. HANSEN: Yes, briefly, Your Honor.

RECROSS-EXAMINATION

BY MR. HANSEN:

Q. When you saw the car the first time at Circle K, did you go up and look in it?
A. No.
Q. You could have tagged it right then, couldn't you?
A. I could have.
Q. You could have written it and left a citation on the windshield?
A. Yes.
Q. But you chose not to?
A. We either got dispatched to another call -- but got rerouted some how.
Q. And you didn't go up and look at the car?
A. No.

MR. HANSEN: Nothing further.

MS. GREEN: Nothing further.

THE COURT: Okay. You may step down.

THE WITNESS: Thank you.

MS. GREEN: I'd ask that he remain.

THE COURT: Next witness.

MS. GREEN: Cliff Bowman.

CLIFF BOWMAN,

a witness called by the People, after having been first duly sworn to tell the truth, the whole truth and nothing but the truth testified on his oath as follows:

DIRECT EXAMINATION

BY MS. GREEN:

Q. Please state your full name and spell your last name.
A. Clifton Bowman, B-O-W-M-A-N.

Q. Would you spell Clifton?
A. C-L-I-F-T-O-N.
Q. Sir, what is your occupation?
A. Dispatch.
Q. For the Sutter County Sheriffs' Department?
A. Sutter County Sheriff's Department.
Q. Were you working on November 27, 2001?
A. Yes.
Q. And do you recall a time when Deputy Brokenbrough called into dispatch and requested that you check on whether or not a particular person was a parolee at large?
A. Yes.
Q. That person being Bruce Edward Brendlin?
A. Yes.
Q. Okay.

MS. GREEN: Your Honor, I have a document that I'd like marked as People's 1.

(People's Exhibit 1 was marked for identification.)

BY MS. GREEN: Q. What do you do -- what did you do in response to Deputy Brokenbrough's call, in response to whether or not there was a warrant?
A. Called the Department of Corrections.
Q. Did you speak with someone at the Department of Corrections?
A. Yes.
Q. What did they tell you?
A. That there was an active warrant.
Q. Do you recall what the warrant was for?
A. Parole violation.

Q. Okay.

THE COURT: For what?

THE WITNESS: Parole violation.

BY MS. GREEN: Q. I'm showing you People's Exhibit 1 for identification.

I'm showing this to counsel first.

Mr. Warriner has already received a copy of it, Your Honor.

Q. People's Exhibit 1 for identification, would you take a look at that document and tell me if you recognize it?

A. Yes.

Q. What is it?

A. It's a copy of a warrant abstract.

Q. Okay. And when you say a warrant abstract, it's a teletype of information, with respect to CDC, of warrants?

A. Yes.

Q. CDC being California Department of Corrections?

A. Yes.

Q. And what -- is this a document that you would be printing at the sheriffs' department?

A. Yes.

Q. Okay. And how do you obtain this information?

A. Via teletype from the Department of Corrections.

Q. Then you print it out while you're working as a dispatcher?

A. Yes.

Q. What does this document tell?

A. It lists the name, physical description and what the violation is.

Q. Okay. And does it indicate that there's a -- was a warrant

for Bruce Edward Brendlin?

A. Yes.

Q. And it was a no bail warrant?

A. Yes.

Q. After you talked to the person at CDC, did you provide that information to Deputy Brokenbrough?

A. Yes.

Q. Okay. And after you print this document, where does it go?

A. To the jail.

Q. And that's when he's booked on the warrant?

A. Yes.

MS. GREEN: No further questions.

MR. WARRINER: No questions.

MR. HANSEN: No questions.

THE COURT: Thank you.

THE COURT: Is this witness excused or do you want him to remain?

MS. GREEN: We can just have him remain.

I'd call Larry Dunn.

LARRY DUNN,

a witness called by the People, after having been first duly sworn to tell the truth, the whole truth and nothing but the truth, testified on his oath as follows:

THE COURT: For the record, unlike most witnesses in Sutter County, I happen to know this witness who was a probation officer in Butte County for a number of years. I have never socialized with him, but he's been there for a number of years before he took whatever job he now has. I did not recognize him in the

hallway.

DIRECT EXAMINATION

BY MS. GREEN:

Q. Please state your full name and spell your last name.

A. Larry Allen Dunn, D-U-N-N.

Q. What is your occupation?

A. State parole agent.

Q. And on November 27th, 2001, were you the parole agent for Bruce Edward Brendlin?

A. Yes.

Q. Are you familiar with him?

A. Yes.

Q. Do you see him in court today?

A. Yes.

Q. Would you point him out, describe what he's wearing and where he's sitting?

A. He's the gentleman that just waved at me that is sitting at the table right in front of me wearing the orange sweatshirt.

THE COURT: Let the record reflect he's been identified.

BY MS. GREEN: Q. I'm showing you People's Exhibit -- Mr. Warriner has a copy of it. I'll show it to Mr. Hansen.

(Pause.)

BY MS. GREEN: Q. Showing you People's Exhibit 2 for identification, would you take a look at that document and tell me if you recognize it?

A. Yes, I do.

Q. What is it?

A. It's an at-large report that I authored and signed off on

November 19, 2001.

Q. What is an at-large report?

A. An at-large report is also referred to as a PAL report.

THE COURT: A what?

A. A P-A-L report, parolee at large. It's a report that I author as a result of an investigation, which is a statement by me that the parolee is avoiding supervision and that his or her whereabouts are unknown. It is also a formal request from me that the Board of Prison Terms suspend parole and issue an arrest warrant.

Q. Did you actually submit that to the Board of prison terms?

A. Yes, I did.

Q. When was that authored?

A. November 9, 2001.

Q. Okay. Showing you what's been marked as People's Exhibit 3 for identification, do you recognize what that documents is?

A. Yes, I do.

Q. What is it?

A. It's a Central Office calendar decision which reflects that the Board of Prison Terms received my report, ordered parole suspended and that a warrant was issued for Mr. Brendlin's arrest, with the last -- his name and CDC number at the bottom.

Q. Was in fact a warrant issued for Mr. Bruce Brendlin for absconding?

A. Yes, ma'am.

Q. You're familiar that that warrant had been entered into the system prior to the time of November 27th, 2001?

A. Yes.

Q. Okay. Showing you People's Exhibit 1 for identification, do you recognize what that is?
A. It's an abstract of judgment -- excuse me -- abstract reflecting the PAL warrant for Mr. Brendlin.
Q. Okay. That's the information that CDC puts in its computer system for law enforcement, with respect to the parolee warrants?
A. Yes, ma'am; the CLETS system on the warrants.
Q. That specifically relates to Mr. Brendlin, correct?
A. Yes.
Q. Does that document tell you when the warrant was entered into the system?
A. Yes, it does.
Q. And when does it say it was entered into the system?
A. November 15, 2001.
MS. GREEN: The People would move items 1, 2 and 3 into evidence, Your Honor.
THE COURT: Any Objection?
MR. WARRINER: No Objection.
THE COURT: Received.
(People's Exhibits 1, 2 and 3 were received in evidence.)
MS. GREEN: No further questions.
THE COURT: Mr. Warriner.

CROSS-EXAMINATION

BY MR. WARRINER:
Q. In regard to Exhibit 3, it says his parole status was suspended as of 10/18/01?
A. Yes, sir.
Q. And so that would mean on November 27, 2001 -- was Mr.

Brendlin patrol status suspended at that time?
A. Yes, sir.
Q. And you're saying that a warrant was issued because of his at large status?
A. Yes, sir.
Q. When it says "suspended," it means that basically -- basically a warrant goes out rather than him continuing to be on parole; is that right?
A. No, sir.
Q. No?
A. No.
Q. Does that mean that your supervision of him is suspended?
A. No, sir.
Q. Okay. But your actively looking for him in order to arrest him at that time?
A. Yes, sir; if I find him, I will arrest him.
Q. Okay. I see. Because there's a warrant in the system?
A. Yes, sir.

MR. WARRINER: Okay. No questions.

MR. HANSEN: No questions.

REDIRECT EXAMINATION

BY MS. GREEN:

Q. With respect to a parolee who is in that suspended status, are they still subject to the same search conditions?
A. Yes, ma'am.

MS. GREEN: No further questions.

MR. WARRINER: No questions.

THE COURT: Does parole suspended simply mean they don't

have the right to be out on parole?

THE WITNESS: It means that the clock has stopped. In probation the terms are a bit different; it would be "revoked." The terms of conditions remain in effect, but the clock is stopped in order to retain jurisdiction.

THE COURT: Okay.

MS. GREEN: No further questions.

MR. WARRINER: No further questions.

THE COURT: Thank you.

THE WITNESS: Yes, ma'am.

MS. GREEN: No further witnesses.

MR. WARRINER: Defense would call Investigator Mark Regan.

MARK REGAN,

a witness called by the Defense, after having been first duly sworn to tell the truth, the whole truth and nothing but the truth, testified on his oath as follows:

DIRECT EXAMINATION

BY MR. WARRINER:

Q. Mr. Regan, what is your role in regards to the Brendlin case?

A. I am a licensed provide gather retained by the Sutter County Public Defender's office to work on your behalf for the defendant.

Q. And what is your -- as a private investigator, what is your prior experience for this job?

A. To become a licensed private investigator, you have to have 6,000 hours prior investigating experience to utilize. I was deputy sheriff with the County of Sutter for 11 years, full time;

prior to that, two years.
Q. Okay. And did you perform some tasks in this Brendlin case in regards to this temporary sticker?
A. Yes.
Q. What did you do?
A. I went to Geweke's tow yard at -- gosh, I forget. I think it's 10th and S Street, in that area, where they have a storage facility, and photographed the vehicle.
Q. All right. And how did you know that you were photographing the right vehicle?
A. I compared it to the police report prepared by Officer -- or Deputy Brokenbrough. The license plates matched the vehicle description and the police report matched.
Q. Okay.
A. And eventually the vehicle registration. And it matched all the information in the report and the CLP.
Q. Okay. I'm going to show you Defendant's Exhibits A and B; can you look at those?
A Yes.
Q. Do you recognize those?
A. Yes, I do.
Q. What does Defense Exhibit A depict?
A. A is a photograph that I took of the vehicle -- of the sticker on December 12th, while it was in the storage yard.
Q. Okay. And that's the so-called temporary sticker that's in the rear window of the vehicle?
A. It's a temporary operating permit.
Q. Okay. Temporary operating permit.

I suspect when you took that picture in Exhibit A you were taking it through the glass in the vehicle. How did you take that picture?

A. Without comparing to the other photographs -- I took 10 photographs. I took photographs of the sticker while it was still mounted in the vehicle, as it was when I came upon it, and then I took photographs when we moved it to the back of it, also.

Q. Exhibit B, what does that depict?

A. B is a photograph of the vehicle from which the defendants were arrested and is referenced to in the police report authored -- written by Deputy Brokenbrough.

Q. Did you -- the interior of the vehicle?

A. Very briefly.

Q. Okay. Did you ever find a receipt in the vehicle?

A. I found a DMV receipt, along with the registration.

Q. Where was that found?

A. I believe -- I don't recall if it was in the glove box -- I think -- I believe, if I'm not mistaken, it was on the floorboard or the seat.

Q. And let me show you some photographs. I'm going to have these marked as Defendant's Exhibits C and D. I've shown these to Counsel.

(Defense Exhibits C and D were marked for identification.)

BY MR. WARRINER: Q. Okay. I'm showing you Defendant's C and D. Do you recognize those exhibits, the pictures?

A. Yes, I do.

Q. What is Exhibit C?

A. C is a photograph of the receipt that was attached to the registration in the vehicle.
Q. All right. And what is Exhibit D?
A. D is -- it's a report of deposit of fees for the vehicle and part of the registration and receipts.
Q. And who's the registered owner of the vehicle?
A. This indicates that the registered owner on this receipt is Gail Tonner, T-O-N-N-E-R.
Q. Now, the picture that you took of that receipt, did you confiscate the actual receipt or did you just take that picture?
A. I took photographs and left everything in the vehicle, which was locked.
Q. Let me see Defense A and B again. I'm going to show you Defense Exhibit A. Is there any way you can tell by looking at Defense Exhibit A, and then looking at Exhibits C and D, whether that receipt corresponds to that temporary operating permit?
A. Yes.
Q. How can you tell?
A. The date stamped and numbers on the receipt and dates are -- they correspond, as well as the receipt is stamped "through November," which is consistent with the 11 on the temporary operating permit. Additionally, although not clear in this photograph -- they're designed to fade, these stickers -- is the vehicle license plate and the month and date and other information that DMV puts on these. So they're seen and displayed in the window to match the registration and people paying fees.
Q. Okay. And on these Exhibits C and D, it looks likes

there's -- is there handwriting on there?
A. That's correct.
Q. What does that state?
MS. GREEN: The item speaks for itself, Your Honor.
THE COURT: If I can read it in the picture.
MR. WARRINER: What does it appear --
THE COURT: I'm going to go over it.
THE WITNESS: I'm sorry.
THE COURT: Go ahead.
THE WITNESS: In the -- it says at the top, "And through November," and the initials, VR.
MR. WARRINER: Okay.
THE WITNESS: Did you want to see those?
(Witness handing document to the Court.)
BY MR. WARRINER: Q. When you were with the special detectives -- what years were you with the special detectives?
A. From 1977 through 1988.
Q. When you were with the sheriffs' department did you ever work patrol, where you would drive around in a patrol vehicle?
A. Yes.
Q. Did you ever make traffic stops?
A. Yes, I made quite a few.
Q. Have you ever seen, when you were a police officer, seen temporary operating permits such as that depicted in Exhibit A?
A. Yes, I have.
Q. And to what -- from your law enforcement experience, what is the significance of that sticker?
A That's given to people at DMV while there are certain

deficiencies or things still due in their registration that are not contraindicative to their still operating the vehicle safely, so they don't get stopped by law enforcement.

Q. So if you were a law enforcement officer and you saw a sticker, 11, and it was the 11th month, November, would you feel authorized to stop the vehicle?

MS. GREEN: Objection; relevance.

THE COURT: Sustained.

MR. WARRINER: No other questions.

Actually, I want to move in my exhibits; I'd ask to move all those in.

THE COURT: A B C and D, received.

(Defense Exhibits A, B, C and D were received in evidence.)

Mr. Hansen, any questions?

MR. HANSEN: I have no questions, Your Honor.

THE COURT: All right. Ms. Green.

MS. GREEN: Yes, Your Honor.

CROSS-EXAMINATION

BY MS. GREEN:

Q. Showing you People's Exhibit C --

MR. HANSEN: People's C?

MS. GREEN: Excuse me; Defense evidence C, actually, where did you find that?

A. You know, it was -- I don't recall exactly. It was either in the glove box, on the floorboard or on the seat; I don't recall.

Q. Okay.

A. Of the vehicle.

Q. Defense C indicates that a smog inspection slash certification is required. Do you know what that means?
A. That means they need to take it to a shop to certify that the vehicle is not in violation of the Air Pollution Act and so forth. So it needs a smog certificate.
Q. Were smog certificates required when you were a policeman?
A. I honestly -- I don't remember. I think so.
Q. Do you own a car?
A. Yes, I do.
Q. Do you have to register your car with the DMV?
A. Yes, I do.
Q. Do you know, from your own experience, in order to register your car you have to show proof your car has been smogged, and you have insurance?
A. That's correct.
Q. Now, showing you Defendant's evidence A, there's an area on this that says "receipt number." Would you tell me what the receipt number is.
A. Could you show me where it says that? I need new glasses.
Q. This white type, it says, "receipt number, No.," with a line above it?
A. Yeah.
Q. Can you tell me what number is written on that line?
A. No, in this photograph, I can't.
Q. You can't read it?
A. Not in this photograph.
Q. Okay.
MS. GREEN: No further questions.

THE COURT: Mr. Warriner.

MR. WARRINER: Yeah, just a minute.

REDIRECT EXAMINATION

BY MR. WARRINER:

Q. Okay. I'm going to show you Defense Exhibit A; it looks like there are two numbered photographs. Can you read paragraph number one?

A. My arm's not long enough. The department receipt -- "the receipt number and receipt number shown on this permit must agree."

Q. All right?

A. "Or" --

Q. Just paragraph one.

A. Okay.

Q. And I'm going to show you Defendant's Exhibit D, and I want you to look at the bottom right-hand corner?

A. Okay.

Q. Is there a stamped number on that bottom right-hand corner?

A. There are stamped numbers, yes.

Q. And on Exhibit A -- is there a stamped number on Exhibit A?

A. There are stamped numbers, yes.

Q. Is that the only stamped number on Exhibit A?

A. Correct.

Q. And does that stamp number on Exhibit A correspond to the stamp number on Exhibit D?

A. Yes, it does.

MR. WARRINER: Okay, no further questions.

THE COURT: Mr. Hansen.

MR. HANSEN: No questions.

MS. GREEN: No questions.

THE COURT: All right. Thank you. Next witness.

MR. WARRINER: No other witnesses.

THE COURT: Okay.

Counsel want to be heard?

MS. GREEN: Your Honor, I would still -- the People's position is that Defendant Brendlin was not detained until the time he was ordered out of the car at gunpoint. At that point there was a warrant for his arrest. And I don't think the defense can make a showing that that arrest, not withstanding the warrant, was unreasonable; therefore I'd ask that the motion to be suppressed be suppressed on that grounds.

On secondary grounds, that you find the defendant is a passenger that has no standing with respect to any of the items that were located in the car or in Ms. Simeroth's waistband or in a cavity search that was conducted at the jail. So I'd ask that you deny it on that grounds.

And if the Court doesn't deny it on either one of those grounds, the People would argue that the officer had probable cause to stop the vehicle, at a minimum to inspect whether or not there was a valid registration, number one, as a violation of Vehicle Code Section 4002; to determine whether or not there was a violation of I believe it's 524 -- I'm not sure; I cited it in my brief.

THE COURT: Not having the rights tabs?

MS. GREEN: Not having the right tabs on the car.

The issue isn't whether or not that car was lawfully

registered; the issue is whether or not the officer at the time that he stopped the vehicle had probable cause to believe that a crime may be committed, based on both the information provided to him prior to the stop, where he observed the vehicle at Circle K, and he was informed by dispatch that it had been expired, and with respect to the evidence that is in front of the Court.

Even if that temporary sticker does match that vehicle, it has to be supported by a letter of DMV, and the vehicle's number has to match; and there's no way an officer is going to know that until he stops, contacts the driver and is provided with that information.

MR. WARRINER: Okay. Actually, just to address the last point. It actually says it needs to be supported by the receipt number. It says: "The receipt number shown on the permit must match the receipt number or a letter issue used by DMV. We showed that the receipt numbers match and everything is paid.

THE COURT: I know. How would the officer see it if it was in the glove box or on the floorboard?

MR. WARRINER: The officer -- Your Honor, the officer doesn't need to see it. When you have a sticker like this that says 11, the reason they put that on is so you don't go around and get stopped by officers, so you can drive in peace in this country and not be stopped by officers. That's why they put the big number on there.

So the officer was wrong in stopping this vehicle. That's what we assert. And I don't think the officer had any reason to come up there and investigate this number 11 sticker. He -- the officer admitted on the stand that there was nothing about the

appearance of the sticker that made him think this was one of these stolen or falsified stickers. There's nothing at all. He had absolutely no reason at all to do that.

He obstructed Mr. Brendlin. He detained Mr. Brendlin. Mr. Brendlin has standing. I cited the cases before, which are mentioned in the prosecutor's brief. Those cases say Mr. Brendlin, the passenger, does have standing to address the issue of a traffic stop.

In any event, Ms. Simeroth is joined in the case and she is the driver. And I don't think there's any assertion that she doesn't have standing; and I think in that sense, Mr. Brendlin can take a backseat to her standing. The Court can't supress it against Ms. Simeroth but not to Mr. Brendlin -- I don't think the Court can.

THE COURT: The Court can. You don't have standing.

MR. WARRINER: Well, I respectfully disagree with the Court.

THE COURT: If your right of privacy hasn't been invaded, you have no standing and can't supress anything.

MR. WARRINER: That's not -- those cases say we do have standing.

THE COURT: Okay. Mr. Hansen.

MR. HANSEN: Well, I don't think there's any question of standing as to Ms. Simeroth.

THE COURT: We don't have to worry about that one.

MR. HANSEN: I think the whole point, just as Mr. Warriner has said, is, DMV is giving a big red sticker so they see a vehicle that appears have registration. That's wrong that that wasn't the case. Otherwise, why would they bother putting the

sticker on the car and why would people have to be stopped every time? I don't think that's the intent of the law and I think the officer knew that. He had no reason to stop.

THE COURT: Okay. Number one, this passenger was not detained until the warrant came back and a gun was pointed at him and he was under arrest. That's number one. He was free to leave. And if he had opened the door and got out and taken a hike, then this officer would have had to decide whether he had something less than probable cause to detain him, and then he would have been detained. But he wasn't detained because he never went anywhere; but he had a right to if he wanted to.

Number two, there is a valid stop. This permit is only valid when it is accompanied by a receipt or a letter and that the numbers match. And so I don't have any problem that the vehicle was stopped, especially when the officer had already radioed earlier in the evening and found out that the vehicle was, according to DMV, unregistered, which gave him all the probable cause in the world to wonder where this thing came from, because the car came back unregistered. And of course it was unregistered and it wasn't to be registered until it had its smog.

Next, a passenger does not have standing to supress the items in the vehicle, separate and apart from whether there's probable cause to arrest him or to detain him. So he's put on no standing that he has any interest in any of the items that he seeks to supress, separate and apart from his allegations that he was detained.

I think that's it.

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MR. WARRINER: Judge, just -- you know, I questioned the officer about the details of his stop and putting on his red lights and the bright light and everything, just to demonstrate to the Court we believe there was a detention.

THE COURT: I know you think there was a detention.

MR. WARRINER: And I think you have to look at it from a reasonable person, what a reasonable person feels, that they're free to go when it's 1:30 in the morning? There's an armed officer approaching the vehicle with red lights and his vehicle parked behind you. I wouldn't get out of the vehicle and walk away.

THE COURT: He felt secure enough to open the door and close it.

MR. WARRINER: So?

THE COURT: He didn't say, "Officer, may I take a hike."

MS. GREEN: Your Honor, with respect to the motion to continue, I would ask that that trail until Monday afternoon. We have a trial readiness conference, and we may be able to enter some stipulations.

THE COURT: Do you want me to continue the motion to Monday afternoon?

MS. GREEN: Yes.

THE COURT: All right. That would be February 11th at 1:30?

MS. GREEN: Yes, we already have a hearing set that day already.

THE COURT: Thank you. Otherwise, the trial -- we're confirming the trial?

MS. GREEN: Correct.

THE COURT: Thank you.

(Proceedings ended.)

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